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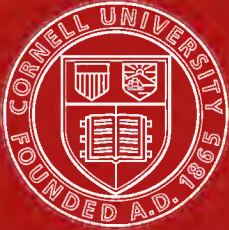
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CASES

DECIDED DURING THE SESSIONS, 1890-91-92-93-94,

BY THE

COURT OF REFEREES

ON

Private Bills in Parliament.

BY

A. G. RICKARDS AND R. C. SAUNDERS,

BARRISTERS-AT-LAW.

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PREFACE

TO RICKARDS AND SAUNDERS'S REPORTS.



THE Reports contained in this Volume include the CASES DECIDED BY THE COURT OF REFEREES ON PRIVATE BILLS IN PARLIAMENT during the Sessions 1890-94, inclusive.

For the sake of completeness, a notice of every Case decided by the COURT OF REFEREES will be found in this series of the Reports, although in cases depending mainly upon questions of Competition, Construction of Agreements, or other special circumstances, and involving no definite principle, a short mention only is made, giving the Decision of the Court as to the *Locus Standi* of the Petitioners. Other cases will be reported at length as in the former Volumes of Reports.

For convenience of reference, the Cases of each year are arranged in alphabetical order, but a complete Index of Cases and Subjects for the whole Volume is appended. Vols. I. and II. of "CLIFFORD AND STEPHENS'S *Locus Standi* REPORTS" (1867-1872) and Vols. I., II., and III. of "CLIFFORD AND RICKARDS'S *Locus Standi* REPORTS" (1873-1884) together with "RICKARDS AND MICHAEL'S *Locus Standi* REPORTS," and the present Volume of "RICKARDS AND SAUNDERS'S REPORTS," together furnish a Record of the Decisions of the COURT during the Sessions 1867-1894, inclusive.

The Editors desire to express their thanks to Mr. BONHAM-CARTER, the Referee on Private Bills, and to Mr. FIELDEN MITCHELL, of the Referees' Office, for kindly obtaining for them copies of Bills, as deposited in the Private Bill Office, and other documents necessary to the preparation of these Reports.

The Reports of Cases decided during the Session 1895 will be published early in next year, and will form Part I. of a new Volume of Reports.

TABLE OF CONTENTS.

	PAGE
REPORTS OF CASES OF 1890	1
REPORTS OF CASES OF 1891	77
REPORTS OF CASES OF 1892	167
REPORTS OF CASES OF 1893	237
REPORTS OF CASES OF 1894	313
INDEX OF CASES	359
INDEX OF SUBJECTS	367

COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1890.

[H.L.] added to the name of a Bill implies that the Bill originated in the House of Lords.

* * Where a Standing Order is quoted or referred to, the number is that of the Standing Orders for the Session 1892.

ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY BILL. [H.L.]

Petition of (1) THE RHYMNEY RAILWAY COMPANY.

16th June, 1890.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. HEALY, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Dock and Railway Company—Running Powers over Petitioners' Railway—S. O. 133 [In what cases Railway Companies to be heard]—Existing Agreement — Complaint against Past Legislation.

Clause 6 of the bill empowered the Alexandra docks and railway company to run over and use the railways of the Pontypridd, Caerphilly and Newport railway company; and by sect. 40 of the Pontypridd, &c., Railway Act, 1878, it had been provided that the Pontypridd company, "and any company or persons for the time being working or using the railways of the company" (i.e., the Pontypridd company) "or any part thereof, either by agreement or otherwise, may run over, work, and use . . . for the purposes of their traffic of every description," the railways of the Rhymney company between the junction of that company's Walnut-tree and Caerphilly branches and Cardiff and the docks there. The petitioners, the Rhymney company, pointed out that clause 6 of the bill, when read with the above sect. 40 of the Act of 1878, would have the effect of admitting the Alexandra company to run over their line, and compete with them for traffic at

the docks in Cardiff, and they claimed a *locus standi* under S. O. 133. It appeared, however, that the petitioners had, under an agreement scheduled to the Pontypridd, Caerphilly and Newport Railway Act, 1882, already agreed to grant to the Pontypridd company, "and to all other companies and persons for the time being working or using the railway No. 1 of the Pontypridd company, power to run over and use in the usual way" the same portions of their railway as those to which they now objected to admit the Alexandra company by virtue of the powers conferred by clause 6 of the bill upon that company over the Pontypridd company's railways. The petitioners contended that it was not in the contemplation of the parties to the agreement confirmed by the Act of 1882 that the Alexandra company, being a dock company, should be admitted to "work or use" the Pontypridd railways:

Held, however, that the petitioners were precluded by the agreement confirmed by Parliament in 1882 from being heard against clause 6 of the bill, which conferred no further powers over their railways upon the promoters than they could have obtained by agreement with the Pontypridd company without coming to Parliament for the present bill, and *locus standi* accordingly *Disallowed*.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petitioners do not allege in their petition, nor is it the fact that any of their lands or property will or can be taken under the provisions of the

bill; (2) the promoters do not admit the accuracy of the recitals of the Acts of Parliament and agreements mentioned in paragraphs 6, 7, 8, and 9 of the petition; (3) the petition appears to relate to clause 6 of the bill, which proposes to confer running powers on the promoters, and on any company or persons lawfully working or using their railways, over the railways belonging to the Pontypridd, Caerphilly and Newport railway company, but the petitioners' railway is not mentioned in the clause or in the bill; (4) it may be that the use of the Pontypridd, Caerphilly and Newport railway by the promoters involves the use by them under existing legislation of some portion of the petitioners' railway, but if that be the result it must have been provided for at the time such legislation took place, and the petitioners ought not now to be heard to raise objections to agreements and Acts of Parliament to which they were parties, but with which the promoters had nothing whatever to do and do not now seek to alter; (5) it is now too late for the petitioners to seek to alter provisions in Acts of Parliament and agreements in favour of the Pontypridd, Caerphilly and Newport railway company, for which they got equivalent advantages at the time, and they ought not to be heard against the bill for any such purpose; (6) the petitioners do not state any facts or reasons in their petition which, according to the practice of Parliament, entitles them to be heard against the bill; (7) the promoters deny that the proposed running powers will prejudicially interfere, or are in any way inconsistent, with the before-mentioned agreement; (8) none of the matters alleged in the petition are such as according to the practice of Parliament entitle the petitioners to be heard against the clause of the bill to which they object.

Bompas, Q.C. (for petitioners): The promoters are a dock company, and have some small lines of railway round the docks, with running powers over the Great Western railway, but these running powers have never been exercised, and also running powers over certain other lines. Clause 6 of the bill provides that "The company, and any company or persons lawfully working or using the railways of the company, or any part thereof, by agreement or otherwise, may, from time to time, run over and use with their engines, carriages and wagons, officers and servants for the purposes of traffic of every description, the railways hereinafter mentioned (that is to say):—The railways belonging to the Pontypridd, Caerphilly and Newport railway company, together with all terminal and other stations and the sidings,

platforms," &c., &c.; and by the Pontypridd, Caerphilly and Newport Railway Act, 1878, sect. 40, it was enacted that "The company," *i.e.*, the Pontypridd company, "and any company or persons for the time being working or using the railways of the company or any part thereof, either by agreement or otherwise, may run over, work and use with their engines, carriages and wagons, and officers and servants, whether in charge of engines and trains, or for any other purposes whatsoever and for the purposes of their traffic of every description . . . so much and all such parts of the railways of the Rhymney company as are situate between the junction of those railways with railway No. 1 by that Act authorised" (which is the beginning of that part of our railway at Caerphilly), "and the town and port of Cardiff and the docks there, but not including that part of the Walnut-tree branch railway which lies to the south of the said junction, together with all stations, sidings," &c., &c., and (sect. 41), upon such terms as, failing agreement, shall be settled by arbitration. The effect of clause 6 of the bill, when read with sect. 40 of the Act of 1878, will be to admit the promoters "as a company working or using the railways of the company," *i.e.*, the Pontypridd company, in the words of that section, to "run over, work, and use" our line, and so compete with us for the traffic at the Bute docks. I claim a *locus standi* under S. O. 133, and I desire to call the attention of the Court to the fact that the effect of the bill will be to admit the promoters to run over our railways, for whom it would, but for the bill, be *ultra vires* as a dock company to obtain running powers over any railway.

Pope, Q.C. (for promoters): It cannot be contended that the Alexandra company is not a railway as well as a dock company. They are owners of 30 miles of railway, were by statute created a railway company subject to the railway companies Acts, and have obtained by statute running powers over 80 miles of the Great Western railway. Their claim to be heard against clause 6 of the bill is precluded by an agreement made by them with the Pontypridd company in 1881, which was confirmed by Act of Parliament in 1882.

Bompas: I was about to call attention to that agreement which is dated 5th August, 1881, and is scheduled to the Pontypridd, Caerphilly and Newport Railway Act, 1882, and made binding on that company and the Rhymney company by sect. 4 of that Act. The material parts of the agreement are as follows:—Article 1. "The Rhymney company to grant to the Pontypridd company and to all other com-

panies and persons for the time being working or using the railway No. 1 of the Pontypridd company, power to run over and use in the usual way such portions of your petitioners' Caerphilly branch as they have not now parliamentary power to use for traffic of all descriptions passing to and from its junction with the Caerphilly branch of the Brecon and Merthyr railway company's Rhymney section to the eastward of Caerphilly, to and from the portion which they now have power to use as aforesaid, but the powers hereby given are not to be used for traffic local to the Rhymney company, nor for any traffic arising at or destined for the Rhymney town and works, or any point in the Rhymney valley or its tributary valleys westward of the Rhymney river and the line of the Cardiff and Caerphilly railway." 2. "The Rhymney company to put the portion of their Caerphilly branch referred to in the preceding article in good working order as a single line in time to take the Pontypridd company's traffic, and to afford all necessary facilities for the due transmission over the said Caerphilly branch of the traffic of the Pontypridd company as if it were the proper traffic of the Rhymney company themselves." Then article 3 provides for the tolls to be paid to us for the use of our line. It cannot be reasonably contended that when we made that agreement we contemplated that a dock company would "work or use" the Pontypridd railway, but Parliament is now being asked to give a dock company a power which will incidentally enable them to run over us and we should say, "we ask you to put a clause into the bill, saying with regard to this new dock company, that this power shall not be exercisable."

Mr. HEALY: The difficulty is this, it is not Parliament giving this power, it is your agreement that has already done so. What you will be arguing before the Committee will be, we have agreed to a certain thing; now we wish to modify that agreement.

Bompas: In entering into the agreement confirmed in 1882, we never intended to admit a dock company to run over our lines. We did contemplate that such railway companies as the Great Western, the London and North-Western, or any other railway company, if they made an agreement with the Pontypridd, should thereby, without the trouble of coming to Parliament, have the right to run over us, and we might very well not object to that, because all these companies would not hurt us or the Bute docks by running over us. We were satisfied in 1882 that, without parliamentary sanction, a dock company could not by agree-

ment obtain the right to run over the line of a railway company.

The CHAIRMAN: The Alexandra company is more than a dock company.

Bompas: It was not in 1878 or in 1882 when this agreement was confirmed by Parliament.

The CHAIRMAN: Now you are touching a material point. Suppose the Pontypridd and the promoters had met behind the backs of the Rhymney and agreed that the Pontypridd should grant running powers, you would have been powerless, would not you? This dock company incorporates the Railway Clauses Consolidation Act, and has all the powers of a railway company.

Mr. HEALY: The words in the agreement are, "all other companies and persons, for the time being working or using the railway No. 1 of the Pontypridd company," so that the agreement would appear to carry this, that not alone all persons who were then in a position to make such agreements with the Pontypridd should run over your line, but all persons who should "from time to time," *i.e.*, subsequently, have power to make agreements with them. Have you not practically put yourselves into the hands of the Pontypridd company on this point?

Bompas: I contend that it could not have been in the contemplation of the parties to that agreement that this dock company should be in a position to avail themselves of it.

Sir GEORGE RUSSELL: The Alexandra company could agree with the Pontypridd company for the use of their line behind your backs, and could therefore do what you object to without this bill.

Bompas: By putting this provision into the bill the promoters have brought themselves within S. O. 133.

The CHAIRMAN: You have shut your own mouth by this agreement, and you cannot ask the Court in construing S. O. 133 to disregard that agreement, or to relieve you from it. Your complaint is in effect a complaint against legislation in 1882. The *Locus Standi* must be *Disallowed*.

Agents for Petitioners, Wyatt & Co.

Petition of (2) THE TAFF VALE RAILWAY COMPANY.

Running Powers over Railway already possessed by Petitioners sought by Bill to be extended to Promoters—Working of Goods and Mineral

Traffic by Petitioners—Control of Railway not vested in Petitioners—Practice.

The Taff Vale railway company also objected to clause 6 of the bill, on the ground that it would admit the promoters to run over the railways of the Pontypridd company, over which they already had running powers under existing agreements, and the goods and mineral traffic upon which they already worked. It was proved, however, by evidence that, although the petitioners supplied the locomotive power for working the goods and mineral traffic, they had no control over the working of the line, the staff employed in working it, or the signals and junctions on it, or its maintenance; and the Court held that there was nothing in their position to except them from the ordinary practice of the Court in such cases, and accordingly disallowed their *locus standi*.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the only provision of the bill to which the petition relates is clause 6, which proposes to confer on the promoters, and any company or persons lawfully working or using their railways, power to run over and use the railways belonging to the Pontypridd, Caerphilly and Newport railway company; (2) the promoters deny that the powers proposed to be conferred on them by the said clause will have the effect alleged in paragraph 4 of the petition; (3) the railways belonging to the Pontypridd, Caerphilly and Newport railway company extend from the Taff Vale railway near Pontypridd to the Caerphilly branch of the Rhymney railway, and from the Brecon and Merthyr Tydfil junction railway at Bassaleg to the promoters' railway near Newport, and form only a small part and not the whole of the route from Pontypridd to Newport as the third paragraph of the petition would appear to indicate, nor does any considerable portion of such railways consist of a single line of rails; (4) the heads of agreement mentioned in paragraph 5 of the petition refer to facilities over the Taff Vale railway, and those facilities cannot be prejudicially affected by the promoters' use of the Pontypridd, Caerphilly and Newport railway. The obligation to deliver traffic into and take traffic from sidings at Pontypridd has never

been performed; (5) the further agreement mentioned in paragraph 6 of the petition does not give the petitioners any right to be heard against clause 6 of the bill. It is an agreement for the petitioners to perform the haulage of goods and mineral traffic at a fixed price per ton per mile for a limited period, the Pontypridd, Caerphilly and Newport railway company paying the expense of maintenance and other expenses; (6) the Pontypridd, Caerphilly and Newport railway company work their own passenger traffic, as admitted in paragraph 7 of the petition, and other companies have running powers over the railways of that company, so that the petitioners have by no means the exclusive use of those railways, and are not entitled to be heard to object against the promoters having running powers; (7) the promoters deny that the proposed running powers will prejudicially interfere or are in any way inconsistent with the before-mentioned agreements; (8) none of the matters alleged in the petition are such as, according to the practice of Parliament, entitle the petitioners to be heard against the clause of the bill to which they object.

Cripps, Q.C. (for petitioners): We object to the powers proposed to be conferred by clause 6 of the bill, on the ground that they will prejudicially affect our rights and interests, under certain agreements between ourselves and the Pontypridd company. The simple question is, whether the promoters are asking by statutory provisions to get powers inconsistent with an agreement between us and the Pontypridd, Caerphilly and Newport railway, under which we work all the minerals and goods traffic over that line. By the heads of agreement set forth in schedule (A) to, and confirmed by, the Pontypridd, Caerphilly and Newport Railway Act, 1878, as supplemented by sect. 25 of the Taff Vale Railway Act, 1879, the petitioners are under an obligation to afford facilities for goods and mineral traffic destined for or coming from the Pontypridd company's line, and to deliver all such traffic into and take the same from the Pontypridd company's sidings, adjacent to the junction between the railways belonging to that company and to the petitioners at Pontypridd, at rates per ton per mile not exceeding the rates for the time being charged by the petitioners for like traffic to or from any dock or tidal harbour at Cardiff or Penarth. Under a further agreement made between the petitioners and the Pontypridd company on the 20th June, 1884, which is still in force, your petitioners provide locomotive power, and work from the Pontypridd junction south of Pontypridd all goods and

mineral traffic passing from the petitioners' railway on to the Pontypridd company's railway at Pontypridd junction, and consigned to and destined for Newport and places beyond, to interchange sidings at or near the junction of the Pontypridd company's railway and the company's railway, and also provide locomotive power for and work to Pontypridd junction all goods and mineral traffic passing over the Pontypridd company's line, and consigned to places on the petitioners' system, or any intermediate places between the said interchange sidings and Pontypridd. Under the said agreement, the whole of the traffic (except passenger traffic) of the Pontypridd company's railway is worked by the petitioners, who are the responsible company for all the traffic except passengers, and the exercise of the proposed running powers by the company would seriously and prejudicially interfere with the proper working of the said traffic by the petitioners and the performance of their obligations to the Pontypridd company under the agreements above referred to. The first clause of the agreement of 20th June, 1884, between us and the Pontypridd, Caerphilly and Newport is to this effect: "Upon the opening of the Pontypridd, Caerphilly and Newport railway for such goods and mineral traffic as hereinafter mentioned" (which is in substance the whole of it), "the Taff Vale railway company will, so far as they lawfully can having regard to the existing rights of other companies or persons, provide locomotive power and work from the Pontypridd junction south of the Pontypridd junction all goods and mineral traffic passing from the Taff Vale to the Pontypridd, Caerphilly and Newport at Pontypridd junction." I call your attention to those words, "having regard to the existing rights of other companies." Now the proposal is that new rights shall be given to a company, which has no rights at the present time, and was not in existence at the time of, or in the contemplation of the parties to, our agreement with the Pontypridd company. The reason why a working company stands in a different position from a company with mere running powers is that the introduction of another company interferes with and may possibly alter the arrangements of the working company, and make it more difficult for it to work the railway.

The CHAIRMAN: The fact of the company being the working company might, in my opinion, make a very material difference, because in the case of a working company the working company might have the management of the signals, the providing of the staff, and

the whole control and responsibility, whereas in the case of a company with running powers merely they would not have the control of the signals, the providing of the staff, or the responsibility of working.

Cripps: We fix the times of the trains and all the locomotive work is done by us.

Mr. CHANDOS-LEIGH: You say you want to be heard against clause 6 because the effect of that clause may be to add difficulties to your locomotive and other arrangements?

Cripps: Yes.

Pope, Q.C. (for promoters): Unless the petitioners can show that they do more than exercise mere running powers over the Pontypridd railway, they are not entitled, in accordance with the practice of the Court, to a *locus standi*, to object to the admission to similar powers of another company over the line.

The CHAIRMAN: We have some little doubt as to what "working the goods traffic" means here. Under whose control is the Pontypridd railway and the staff?

Pope: Under the control of the Pontypridd company. The Taff Vale merely supply haulage for the goods and mineral traffic.

[A witness was here called on behalf of the Taff Vale company, who admitted to Mr. Pope that that company had no control over the working of the Pontypridd company's line or the signals or junctions, beyond the junction of the Taff Vale railway with it.]

The CHAIRMAN: Without offering any judgment as to what might happen in similar cases where the details might be dissimilar, in this particular case we do not think the claim to a *Locus Standi* has been made out.

Agents for Petitioners, *Sherwood & Co.*

Agents for Bill, *W. & W. M. Bell.*

AYR HARBOUR BILL.

Petition of (1) THE ARDROSSAN HARBOUR COMPANY; and (2) THE DUKE OF PORTLAND.

17th April, 1890.—(Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Railway and Harbour Companies—Power to Railway Company to subsidise Harbour Revenues—Opposition of Trustees and Owner of Competing Harbour—Vesting of Railways belonging to Harbour Trustees in Railway Company—Alleged Virtual Amalgamation—Improvement of Existing Competition—Diversion of Traffic to

Harbour subsidised by Railway Company—S. O. 156 [Railway Company not to acquire Docks, &c.].

The bill confirmed an agreement between the Ayr harbour trustees and the Glasgow and South-Western railway company with respect to Ayr harbour, by providing for the guarantee by that company of the interest on a portion of the Ayr harbour debt; for the division of surplus revenue derived from the harbour, after payment of interest and contribution to a sinking fund, between the trustees and the railway company; for altering the constitution of the harbour trust, and giving the Glasgow company a larger representation upon the trust than they at present possessed; and for vesting the railways belonging to the trustees, in and around the harbour, in the Glasgow company until the year 1915, or as much longer as might be agreed between the trustees and the company, and for matters incidental to these objects. The Ardrossan harbour company, and the Duke of Portland, as the owner of Troon harbour, both opposed the bill on the ground that it would import a fresh element into the competition already existing between the Ayr, Ardrossan, and Troon harbours, and would give the Glasgow company, which served all three harbours, and the Troon harbour exclusively of other railway companies, a pecuniary interest in, and an inducement to assign traffic to Ayr harbour in preference to Ardrossan and Troon, which it did now possess. The petitioners contended that the bill, by giving the Glasgow company, in certain events, a share of the profits derived from the harbour of Ayr, and by vesting the railways now belonging to the harbour trustees in and around the harbour in the Glasgow company, amounted to a virtual amalgamation of the harbour with the Glasgow company's undertaking. As an additional argument in favour of their *locus standi*, the petitioners directed the attention of the Court to the bill now before Parliament for the amalgamation of the Glasgow company's

undertaking with that of the North British railway company, which bill the Ayr harbour trustees had, in the agreement scheduled to the bill, undertaken to support; and which would (the petitioners contended) result in bringing still more additional traffic from the North British railway system to Ayr harbour to the detriment of their own harbours. The promoters contended that the bill now before the Court merely enabled the Glasgow company to subscribe to and subsidise the Ayr harbour revenues, and could not properly be considered an amalgamation bill, and that the effect of it would be at the most to increase an existing competition:

Held, however, apparently without regard to the pending bill for the amalgamation of the Glasgow and North British railway companies, that both petitioners were entitled to a *locus standi*.

The *locus standi* of (1) the Ardrossan harbour company was objected to on the following grounds: (1) the possession by the petitioners of a harbour at Ardrossan does not give them any right to be heard against the bill, which relates to the harbour of Ayr and works thereat; (2) there are no provisions in the agreement to which the bill proposes to give effect which entitle the petitioners to be heard; (3) if it were the case, which the promoters do not admit, that the effect of the bill would be to induce the Glasgow and South-Western railway company to divert their traffic to Ayr, that fact would not give the petitioners any right to be heard against the bill; (4) no new competition as against the petitioners or in any way affecting the petitioners will be created by the bill; (5) the existing competition between the petitioners and the Ayr harbour trustees referred to in the petition gives the petitioners no right to be heard; (6) the statements in paragraph 14 of the petition are irrelevant. The promotion of a bill for the amalgamation of the Glasgow and South-Western railway company (whether such bill does or does not affect the petitioners) does not, according to the practice of Parliament, entitle them to be heard; (7) the petitioners are not entitled to be heard with respect to any interest, pecuniary or otherwise, which the Glasgow and South-Western railway company may have in the harbour of Ayr or its

revenues; (8) the bill does not give the Glasgow and South-Western railway company any exclusive right or control of Ayr harbour, which is and will remain entirely subject to the control of the Ayr harbour trustees, nor will the railway company have any preponderating interest or influence on the harbour board; (9) the petitioners have no such interest in the undertaking of the promoters as to entitle them to be heard, and the petition discloses no ground which, according to the practice of Parliament, entitles them to be heard.

The *locus standi* of (2) the Duke of Portland was objected to on the following grounds: (1) the possession by the petitioner of large estates and a harbour at Troon does not give him any right to be heard against the bill which relates to the harbour of Ayr and works thereat; (2) there are no provisions in the agreement to which the bill proposes to give effect which entitle the petitioner to be heard; (3) if it were the case, which the promoters do not admit, that the effect of the bill would be to induce the Glasgow and South-Western railway company to develop the traffic at Ayr in opposition to Troon, the fact would not give the petitioner any right to be heard against the bill; (4) no new competition as against the petitioner, or in any way affecting the petitioner, will be created by the bill; (5) the existing competition between Troon and the Ayr harbour trustees referred to in the petition gives the petitioner no right to be heard; (6) the statements in paragraphs 9, 10 and 11 of the petition are irrelevant. The promotion of a bill for the Amalgamation of the Glasgow and South-Western railway company with the North British railway company (whether such bill does or does not affect the petitioner) does not, according to the practice of Parliament, entitle him to be heard; (7) the petitioner is not entitled to be heard with regard to any interest, pecuniary or otherwise, which the Glasgow and South-Western railway company may have in the harbour of Ayr or its revenues; (8) the bill does not give the Glasgow and South-Western railway company any inclusive right or control of Ayr harbour, which is and will remain entirely subject to the control of the Ayr harbour trustees, nor will the railway company have any preponderating interest or influence on the harbour board; (9) the petitioner has no interest in the undertaking of the promoters, or either of them, which would entitle him to be heard, and the petition discloses no ground which, according to the practice of Parliament, would entitle him to be heard.

Saunders, Q.C. (for the Ardrossan harbour company): The bill is of a peculiar character: it proposes to put the Glasgow and South-Western railway company, until it becomes amalgamated, if it should do so, with the North British railway company under a bill of this Session, in the position of having a very material precuniary interest in the harbour of Ayr. The harbour of Ayr is a public harbour vested in a body of 16 trustees, of whom the Glasgow company elect one, the harbour ratepayers electing others, and certain official members of the corporation being upon the body. The trustees want to improve their harbour, but the reserve fund is at present insufficient for this. The bill proposes to confirm an agreement between the harbour trustees and the Glasgow and South-Western railway, which at present serves the towns and harbours of both Ardrossan, Troon and Ayr. That agreement secures to the trustees a guarantee by the Glasgow Company of 3½ per cent. upon £37,000, the present debt of the trustees. By the fourth article of that agreement the trustees shall, as at present, be 16 in number, but in place of the company, as at present, appointing one person, they may appoint four persons to be trustees under the Harbour Acts; and if any question shall arise between the trustees appointed by the company and a majority of the trustees present at any meeting as to capital expenditure or extraordinary expenditure of revenue, such question shall, at the request of the trustees or of the company, be forthwith referred to the sheriff of the county of Ayr, who may, if he thinks fit, attend a meeting of the trustees, hear parties, and decide, and his decision shall be final. By article 5, "in addition to the railways which the company were, by the Glasgow and South-Western Railway Act, 1878, authorised to make and maintain, the company shall have power to lay rails connecting their railways with any portion of the harbour, the lines and levels of such rails being first approved by the trustees;" but the sixth article provides "That the company shall purchase the railways belonging to the trustees, but exclusive of the *solum*, at a price to be fixed, failing agreement, by arbitration, and the said railways when purchased, and also any rails which may be laid by the company under the last preceding article, shall, for the purposes of tolls, rates, and charges, and for all other purposes whatsoever, form part of the undertaking of the company." The ninth article provides "That this agreement shall come into operation on the passing of the bill hereinafter mentioned, and shall continue until and including Whit-

Sunday, 1915, or such later date or dates as the trustees and the company may from time to time agree upon. On the expiration of this agreement, the trustees shall acquire or reacquire, as the case may be, the lines of railway to be purchased or laid by the company in terms of this agreement at a price to be fixed failing agreement by arbitration." The tenth article provides: "The trustees and the company shall promote a bill in the next Session of Parliament for confirmation of this agreement, or containing clauses for giving effect to this agreement." The eleventh article provides "That the trustees shall support a bill to be introduced in the next Session of Parliament for the amalgamation of the company and the North British railway company." This bill is, therefore, brought in to give the Glasgow and South-Western, and ultimately the North British, a position which they have not got at the present time in the harbour of Ayr, and the question is, does that give the harbour of Ardrossan a *locus standi* for the purpose of being heard as to whether or not it is a matter of public policy that the agreement which the bill carries out should be confirmed? The petitioners were incorporated by the Ardrossan Harbour (Sale and Transfer) Act, 1886, and the harbour became vested in them by that Act. Ardrossan harbour is now served by two railway companies, the Glasgow and South-Western and the Lanarkshire and Ayrshire, who have equal rights in respect of the conduct of traffic, but the harbour company is perfectly independent of both these companies. Neither Ardrossan, Ayr, nor any other harbour have received any assistance by way of contributions of funds or guarantee from the South-Western company such as to entitle the company to any pecuniary interest in the harbour revenues. All the harbours at present stand upon an equal footing, each competing for trade, but under the bill the Glasgow and South-Western seek to obtain special rights and interests in Ayr harbour which will induce them to divert all traffic to Ayr. Not only during the time there is a possible deficiency in income will it be the interest of the Glasgow and South-Western company to increase the revenue of the harbour of Ayr, but also when the income is sufficient to pay the whole guarantee they will be just as much interested, for article 3 of the agreement provides: "If it appear from the accounts of the trustees as audited in terms of the Act of 1855 for any year that, after payment of all expenses of management, maintenance, and other annual expenses, the payment to the sinking fund in terms of the Act of 1884 (which shall be

applied as aforesaid), and interest at £3 5s. per cent. per annum, or at such rate or rates, more or less, as shall be payable for that year on the capital borrowed for the time by the trustees, there is a surplus of the revenues of the harbour, such surplus shall be divided equally between the trustees and the company, and the trustees shall make payment to the company of one-half of such surplus." The result is to make the interest of the Glasgow company permanent in favour of Ayr, at the expense of Ardrossan and other harbours, to which the access is by the Glasgow company. The result of this is just as detrimental to us as if we are forced by Parliament to compete with a harbour which has advantages which we do not have. We get no benefit from our connection with the two railways, except in respect of the traffic which they bring to the port. At Ayr the harbour authority will not only get the advantage which they get from having a railway running into the port, but they will get besides a pecuniary contribution annually, and the further advantage from the fact of the railway company themselves having a pecuniary inducement to direct traffic from all parts of their system upon Ayr, instead of upon Ardrossan. Not only are the ports competitive, but the traffic itself is distinctly of a competitive character, both ports dealing largely in coal.

THE CHAIRMAN: You say there is a railway serving several ports, and the port of Ardrossan objects to that railway company acquiring such an interest in one of the other ports as would give it a strong inducement to favour that port in preference to the others.

Saunders: Yes. As long as the harbour of Ayr is independent, and has not the benefit of a guarantee from the railway company, we are on a *par* with them.

MR. CHANDOS-LEIGH: You say, though it is not creating a new dock, still it is changing the status of an existing dock.

Saunders: Yes.

MR. CHANDOS-LEIGH: In a great many of the cases that have come before us—the Barry dock and railways, the Bute docks, and the Alexandra (Newport dock) cases—there was the creation of a new dock.

Saunders: There have been the Bristol cases, the Barry dock cases, the Burnham tidal harbour, the High Bridge, and the Southampton cases, and many others in which, where new docks were proposed to be constructed, existing docks, even 15 or 20 miles away, were allowed to be heard. In principle this case is the same, because, by the bill, the promoters are importing a new element which practically raises a

competition which does not exist at present, that is, the competition of the railway interest. The railway interest to Ayr may kill the poor harbour interest at Ardrossan by reason of the long purse of the railway company. At present neither Ayr harbour nor Ardrossan can afford to go below the market price of the dues to get a reasonable interest upon its capital to pay its shareholders. But if the Ayr harbour dues were put so low as not to pay the expenses of management, then the railway company would have to pay the whole of the deficiency, and yet they might make a very good bargain because they would get the long lead upon their line.

The CHAIRMAN: The Glasgow and South-Western company carry both to Ardrossan and Ayr?

Saunders: Yes. I say it would answer their purpose to reduce the dues to Ayr, because they would get the longer lead between the point of junction near Ardrossan and Ayr.

Mr. CHANDOS-LEIGH: The lines of the Ayr harbour at the present are the lines of the trustees, but by this bill they are going to be made the lines of the railway company.

Saunders: Yes; the bill practically vests the railways in the Glasgow company.

Mr. CHANDOS-LEIGH: Do you rely upon Article 11, that the trustees shall support a bill to be introduced in the next Session of Parliament for the amalgamation of the company and the North British company?

Saunders: Yes. It becomes very important that a power of this kind shall not be vested in so powerful and influential a company as the North British. It is contrary to public policy to vest a harbour in a railway company.

The CHAIRMAN: You say it is not only putting Ayr harbour into the hands of one railway company, but also a railway company seeking amalgamation with a more powerful railway company?

Saunders: Yes.

Pembroke Stephens, Q.C. (for (2) the Duke of Portland): The Duke of Portland is the owner of the harbour of Troon, and he and his predecessors in title have spent a quarter of a million on the construction of the harbour and docks. With reference to this bill the Duke stands in the same position as Ardrossan harbour, with this exception, that the Glasgow and South-Western is the only railway serving Troon. I adopt the arguments urged on behalf of Ardrossan, and say, that this is virtually an amalgamation bill; it may be called by another name, but it is a long step towards amalgamation. The Court has over

and over again held that an amalgamation bill gives a wider latitude to opponents than almost any other class of bill; and for this reason the recommendation of the Committee on amalgamation, was that in the case of amalgamation bills no technical rules of *locus standi* should be allowed to stand in the way of traders, or other persons interested, obtaining fair terms upon that amalgamation. In case after case where a possible diversion of traffic from one route to another has been shown even short of amalgamation, a *locus standi* has been allowed to companies and persons affected. Against the *London and South-Western Railway (Various Powers) Bill*, 1883 (3 Clifford and Rickards, 306), for instance, where there was a proposal to put several railways in the Isle of Wight into one hand, and where there was a mere possibility of diversion of traffic from Southampton, the Southampton corporation and the Southampton harbour were allowed to be heard. Similarly in the *London and North-Western (England and Ireland) Railway Bill*, 1874 (1 Clifford and Rickards, 93), where the London and North-Western company were trying to form groups of railway interests to lead traffic to Greenore, Dundalk, a short distance off, was heard. Here there is a virtual amalgamation of the harbour of Ayr and the railway, and there is an avowed amalgamation bill being promoted this Session, and the two cases are so closely united in the minds of the promoters, that in the agreement scheduled to this bill the harbour trustees agree to support the amalgamation bill, which makes this bill an avowed amalgamation. In the first place, this is a virtual transfer of the harbour to the railway company. Secondly, it is a bill practically for the creation of a new kind of competition between harbours only six or seven miles away from one another upon the same coast. Thirdly, we are absolutely dependent upon the Glasgow and South-Western for our success. Fourthly, this is part of a larger amalgamation, the whole arrangement being contained in two bills. Fifthly, the principle of Parliament in all these cases has been to give the parties affected by it the widest power of enquiry and of safeguarding themselves. This bill means facilities to the Ayr route, as Ayr harbour is in competition with the harbour of Troon, which is owned by the petitioner. The bill is also opposed to the policy of Parliament, as shown in S.O. 156.

Pope, Q.C. (for promoters): The question is whether the petitioners are entitled to object to the Glasgow and South-Western advancing any money to Ayr harbour. With

reference to Ardrossan and Troon it seems to me they practically stand upon the same footing.

The CHAIRMAN: The case of Troon would seem to be a little stronger than the case of Ardrossan, because they say the Glasgow and South-Western is the sole means of getting traffic.

Pope: Yes, but the Caledonian have running powers to Troon with reference to certain traffic.

The CHAIRMAN: That tends to put Troon and Ardrossan more upon the same footing.

Pope: I should be quite prepared to concede that if you come to the conclusion that this is anything like an amalgamation between harbour interest and railway interest, then the question would be whether that interest might be used so as to divert traffic from neighbouring harbours. The question is, does this bill give anything more than a mere right to the Glasgow railway company to subscribe, but without any amalgamation of dock and railway interest, or any right to the management of the docks?

Mr. CHANDOS-LEIGH: But you change the *status* to a considerable extent; you change the constitution of the harbour trust.

Pope: A domestic alteration in the constitution of the trust is no ground of *locus standi* to neighbouring harbour authorities, unless it be such as to give a railway company a pre-dominating interest in one port over another.

Mr. CHANDOS-LEIGH: Then this railway company takes possession, except of the *solum*, of the harbour trustees' line.

Pope: That does not affect the question of diversion of traffic. The only point is really the question of the guarantee of $3\frac{1}{2}$ per cent. and the division of the receipts, which may be said to give them a certain interest in the receipts of the port itself. Parliament has provided against the lowering of harbour dues so as to induce traffic to pass over the longer lead of railway to the profit of the railway, by the Railway and Canal Traffic Act, 1888, sect. 30.

Mr. CHANDOS-LEIGH: But the Duke of Portland or the Ardrossan harbour company might wish to be able to stop it in the first instance without having recourse to the Railway Commissioners.

Pembroke Stephens: It is one thing to have a remedy against a monopoly when created; it is another thing to stop the monopoly being created.

The CHAIRMAN: Though the remedy is there it is an expensive remedy, and we think, notwithstanding that remedy, the Ardrossan

harbour and the Duke of Portland are entitled to a *Locus Standi*.

Agents for Ardrossan Harbour, *Martin and Leslie*.

Agents for the Duke of Portland, *Dyson & Co.*

Petition of (3) THE CALEDONIAN RAILWAY COMPANY.

The Caledonian railway also claimed to be heard against the bill on the ground of competition. They had running powers and facilities from Muirkirk into Ayr, which, however, they alleged were of little use to them in competing with the Glasgow and South-Western company for traffic to Ayr, and they complained that the bill, by authorising a virtual amalgamation between that company and the Ayr harbour undertaking, would put them into a still worse position as regards competition than they occupied at the present time. It was pointed out that the running powers and facilities at present enjoyed by the petitioners over the Glasgow company's lines were by clause 20 of the bill extended to the lines to be purchased or laid by that company under the provisions of the agreement with the harbour trustees confirmed by the bill; and the Court held that under these circumstances the interests of the petitioners were not sufficiently affected to entitle them to a *Locus Standi*.

Agent for the Petitioners, *Beveridge*.

Agents for Bill, *Grahames, Currey & Spens, and Sherwood & Co.*

BEVERLEY & EAST RIDING RAILWAY BILL.

Petition of THE SCARBOROUGH, BRIDLINGTON AND WEST RIDING RAILWAY COMPANY.

24th April, 1890.—(Before Mr. PARKER, M.P., Chairman; &c., &c.)

In this case the petitioning company claimed a *locus standi* on the ground of competition. The arguments consisted principally of references to maps of the district which would be served by the two companies, and the case was of no value as a precedent. The *Locus Standi* of the petitioners was *Allowed* on the ground claimed, viz., competition.

Cripps, Q.C., appeared for the Petitioners; *Clifford* for the Bill.

Agents for Petitioners, *Sherwood & Co.*

Agents for Bill, *W. and W. M. Bell*.

BILSTON COMMISSIONERS WATER BILL.

Petition of THE GUARDIANS OF THE POOR OF THE SEISDON UNION.

17th April, 1890.—(Before Mr. PARKER, M.P., Chairman; &c., &c.)

Application to extend Time for giving Notice of Objections to Locus Standi of Petitioners.

Pritt, parliamentary agent (for promoters) applied to the Court to allow the time for giving notice of objections to the *locus standi* of the Seisdon Union to be extended under the following circumstances. The notice of objections was due on the 6th March; it was sent to his client for approval on the 1st March, and returned by him with some suggestions on the 4th. Those suggestions having been given effect to, in the hurry of business the thing was overlooked, and the objections were not lodged till the 24th, and as there had been no sitting of the Court since the 24th, there had been no opportunity of bringing the matter before the Court till now. The bill was not yet grouped.

Baker, parliamentary agent (for petitioners), claimed the benefit of the oversight, and he referred to the case of the *Southwark and Vauxhall Water Bill*, 1872 (2 Clifford and Stephens, 222).

The CHAIRMAN: I am afraid we cannot accede to this application. The "special circumstances" are that the objections were not lodged from a pure oversight. We regret it very much, but if we were to relax the rule in this case we should have to do it in others.

Mr. CHANDOS-LEIGH: The promoters can state the circumstances when they get to the other House.

Locus Standi Allowed.

BRITON MEDICAL AND GENERAL LIFE ASSOCIATION BILL.

Petition of (1) GEORGE MORLEY; AND (2) BERNARD BOALER.

9th May, 1890.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRES WILL, Q.C., M.P.; Sir GEORGE RUSSELL, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

The bill, to which was scheduled a scheme sanctioned by the Chancery Division of the High Court for the reduction of the assurance and annuity contracts of the Briton Medical

and General Life Association, provided for the reconstruction and regulation of the affairs of the Association. The petitioner (1), George Morley, claimed to be heard against the bill as a registered shareholder, and the petitioner (2), Bernard Boaler, as the legal transferee by deed of shares, and both petitioners claimed to be heard as parties to suits against the Association and its alleged present directors in the Chancery Division of the High Court of Justice, in respect of, *inter alia*, the fraudulent issue and conversion of shares, and the invalidity of calls in respect of shares. In these suits both the petitioners had asked for a declaration of the Court that the present acting directors were not lawfully qualified to act as such, and for an injunction to restrain them from so acting. They claimed to be heard against the bill as prejudicially affecting their legal status. The promoters objected to the *locus standi* of petitioner (1) on the ground that although his name appeared on the register of shareholders he was not at the present time a shareholder, his shares having been forfeited to the Association under an article of association which provided that "the company shall have a lien on and shall be entitled to retain and appropriate the whole value of the shares and interest of any shareholder for the time being for and in or towards payment and liquidation of any debt or liability due from or entered into by any such shareholder to or with the company," and . . . "that the said shares and interests are hereby assigned and conveyed to and declared to be vested in the Board of Directors accordingly;" and that the petitioner was really in the position of a debtor to the Association in respect of unpaid calls, against whom judgment had been obtained for the amount of the calls. They further argued that even if he were a shareholder of the Association he had not dissented at the public meeting called to consider the bill within the meaning of S. O. 132, and that his having taken separate action by instituting a Chancery suit did not give him a distinct interest from other shareholders within the meaning of S. O. 131. With regard to petitioner (2), who claimed to be the legal transferee of certain shares in the Association, although his name did not appear on the register of shareholders, the promoters stated that there was a large outstanding debt to the Association for arrears of calls in respect of the shares in question, and that the directors had refused to register the transfer of the shares to the petitioner under one of their articles of association, which provided that "no shareholder in the company shall be

entitled or allowed to sell or transfer any shares or vote in respect thereof at any meeting of the shareholders till the amount of any call or calls made in respect of the shares in the company shall have been fully paid and satisfied." The promoters further stated that the petitioner had applied under the Companies Acts to the Court of Queen's Bench to rectify the register by inserting his name therein, but that the Court had dismissed the application with costs, and further that on an appeal by the petitioner to the Court of Appeal, that Court had dismissed the appeal with costs. The promoters therefore contended that the claim of the petitioner to be heard as a shareholder was *res judicata*, and that he had no interest entitling him to be heard against the bill. The Court, after intimating that it was not competent for them to re-open or decide the question of the legal rights of the petitioners, *Disallowed* the *Locus Standi* of them both.

The arguments were of a technical character, and turned largely upon the powers conferred upon the association by its articles, which were of a special character.

Nevill appeared for Petitioner (1); the Petitioner (2) appeared in person; and *J. D. Fitzgerald* for the Bill.

Agent for Petitioner (1), *Harman*.

Agents for the Bill, *Rees & Frere*.

BUTE DOCKS (CARDIFF) BILL. [H.L.]

Petition of (1) THE BARRY DOCKS AND RAILWAYS COMPANY; AND (2) THE ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY COMPANY, AND OF THE NEWPORT (ALEXANDRA) DOCK COMPANY, LIMITED.

12th June, 1890.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Dock Companies—Transfer to Competing Dock Company of Powers Conferred on Railway Company to Construct Railways—Competition, New or Improved.

Part III. of the bill transferred to the Bute docks company powers, conferred upon the Rhymney company by the Rhymney Railway Act, 1888, to construct certain railways which would connect the Rhymney company's Cardiff and Caerphilly railway with

the Sirhowy railway of the London and North-Western company. The petitioners objected to the transfer of powers from a neutral railway company to a rival dock company in direct competition with themselves for mineral traffic from the Welsh valleys to the north of Cardiff, which would, they alleged, result in a diversion of that traffic exclusively to the Bute docks, some of which, if carried by the Rhymney company, would have found its way to their respective docks. It was contended on behalf of the promoters that it would have been equally to the interest of the Rhymney company to have carried the traffic over the railways authorised to be constructed by them in 1888 to the Bute docks, and that inasmuch as the Act of 1888 conferred upon the Bute docks company full running powers over the railways authorised by it in the hands of the Rhymney company, the position of the petitioners under that Act could not be materially affected by the bill:

Held, however, that both the petitioners were entitled to be heard against Part III. of the bill [Transfer of Powers].

The *locus standi* of (1) the Barry docks, &c., company, was objected to on the following grounds: (1) the petitioners do not allege in their petition, nor is it the fact that any lands or property belonging to them will be taken or interfered with by the bill, and they have not and do not allege any such interest in the subject-matter of the bill as to entitle them to be heard according to practice; (2) the petitioners have no such interest in the traffic which will arise upon or be conveyed for shipment over the railways authorised by the Rhymney Railway Act, 1888, as would entitle them to be heard against the bill; (3) the petitioners are not entitled to be heard against the bill in respect of the proposed transfer of the powers, already granted by the Rhymney Railway Act, 1888, from the Rhymney railway company to the promoters; (4) no such competition with the petitioners will result from or be created by the bill as to entitle them to be heard; (5) the petitioners did not petition against the bill for the Rhymney Railway Act, 1888, and even if they had petitioned against that bill they could not have alleged any interest of theirs as affected by that bill which would have entitled

them to be heard against it; (6) the petitioners are not entitled to be heard in support of any application for running powers over the railways proposed to be transferred; (7) the petitioners are not entitled to be heard on any general question of public policy raised in their petition; (8) while not admitting the statements in the petition, the promoters maintain that the petitioners do not state any facts or reasons which, according to the practice of Parliament, entitle them to be heard against the bill.

The *locus standi* of (2) the Alexandra (Newport, &c.) docks and railway company and the Newport (Alexandra) dock company was objected to on the following grounds: (1) the possession by the petitioners of docks and works at Newport, does not entitle them to be heard against the bill, and they have not and do not allege any such interest in the subject-matter of the bill as to entitle them to be heard according to practice; (2) the petitioners presented a petition against the bill for the Rhymney Railway Act, 1888, but their *locus standi* was objected to in the House of Commons by the Rhymney railway company, and disallowed by the Court of Referees; (3) even if the petitioners had been entitled to be heard against the said bill, they are not entitled to be heard against the present bill in respect of the proposed transfer of the powers already granted by the Rhymney Railway Act, 1888, from the Rhymney railway company to the promoters; (4) no such competition with the petitioners will result from or be created by the bill as to entitle the petitioners to be heard; (5) the bill does not confer any new or additional running powers on the promoters over the Rhymney railways, nor would it enable the promoters to affect the traffic to or from the petitioners' docks and railways so as to entitle them to be heard against the bill; (6) the petitioners are not entitled to be heard in support of any application for running powers over the railways proposed to be transferred; (7) the petitioners are not entitled to be heard on the questions raised in paragraph 26 of their petition; (8) while not admitting the statements in the petition, the promoters maintain that the petitioners do not state any facts or reasons, which, according to the practice of Parliament, entitle them to be heard against the bill.

Pember, Q.C. (for petitioners (1)) : Part III. of the bill transfers to the promoters, in default of its exercise by the Rhymney company, the power to construct certain railways conferred upon the Rhymney railway company by the Rhymney Railway Act, 1888. These railways would connect the Rhymney company's Cardiff

and Caerphilly railway with the Sirhowy railway of the London and North-Western company. The petitioners claim a *locus standi* on the ground that the promoters having already running powers over the Rhymney railway as far as the point where the proposed line of 1888 runs out of the Rhymney railway, they will practically have a line of railway running all the way from the northern portions of the Rhymney railway over that company's railway and the Sirhowy railway of the London and North-Western company down to the Bute docks at Cardiff, the result of which will be that, instead of having a neutral company like the Rhymney to deal with, we shall have the traffic in the hands of the Bute dock company, whose first object will be to get every ton of traffic down to their own docks. At the present moment we have just concluded an agreement with the Taff Vale company to run over their railway as far as Walnut Tree junction, where we meet the Rhymney company, and we can make arrangements for getting traffic over the Rhymney railway down to Barry, but if once this link passes into the hands of the Bute dock company we shall never be able to do so. In all these Barry bills and Alexandra dock bills you have always held that you would allow a *locus standi* to parties interested in South Wales traffic—destined either for the Barry docks or for the Bute docks.

The CHAIRMAN: There is a comparatively recent decision of this Court in regard to this district in the *Bute Docks (Cardiff) Bill, 1889* (Rickards & Michael, 235).

Pope, Q.C. (for petitioners (2)) : The petitioners object to the transfer proposed by the bill and ask for a *locus standi* on the principle that all the ports are interested in all the traffic in this district of South Wales. The promoters seek to take possession of a route in which we are, as a competing dock company, at present interested, with the view of diverting traffic from our docks down to their own.

Bidder, Q.C. (for promoters) : With regard to the Barry docks company, they are another competing port, and have two junctions with the Taff Vale at Treforest and Hafod for the purpose of getting the Aberdare and the Rhondda coal; but their interest in the Monmouth coal is of the most remote character, and they are not damnified by the transfer of powers to the Bute company authorised by the bill, for it would be as much the interest of the Rhymney company, owing to the longer lead they would obtain, to send all the coal they can get from Sirhowy to Cardiff, as it would be the interest of the promoters themselves to

get it to Cardiff. The same consideration applies to the Newport dock companies, whose interests cannot be prejudiced by our finding the capital and making the line. An important consideration in the case of both petitioners is, that sects. 33 and 34 of the Rhymney Railway Act, 1888, provide that the Bute dock company shall have full running powers, on the usual arbitration terms, over the railways authorised to be constructed under that Act by the Rhymney company. Under these circumstances, the bill cannot make any material alteration in their position.

The CHAIRMAN: The *Locus Standi* of both the Petitioners is *Allowed* against Part III. of the Bill, and so much of the preamble as relates thereto.

Agents for Petitioners (1), *Dyson & Co.*

Agents for Petitioners (2), *W. & W. M. Bell.*

Petition of (3) THE GREAT WESTERN RAILWAY.

Transfer to Dock and Railway Company of Powers to construct Railway previously converted on Railway Company—Petition of Railway Company—Obstruction of Traffic.

Practice—Railway Company as Landowners—Interference by formation of Junctions with Land of Railway Company—Omnibus Bill, General Locus claimed against—"Post Case" [London and North-Western Railway (New Works, &c.) Bill, 1868, 1 Clifford & Stephens, 62] discussed—S. O. 133 [In what Cases Railway Companies to be heard.]

Part II. of the bill, which was an omnibus bill, empowered the promoters to make a railway, No. 2, terminating by a junction with the railway of the Great Western company, over whose land compulsory power was taken for this purpose. The promoters conceded to the petitioners a *locus standi* against Part II. of the bill, but a general *locus standi* was claimed by the petitioners as landowners on the authority of the decision of the Court in the *London and North-Western Railway (New Works, &c.) Bill, 1868*, on the petition of the *Lancashire and Yorkshire Railway Company* (1 Clifford and Stephens, 62), known as the "post case," and subsequent decisions following it. These decisions, the petitioners contended, gave the Court no alternative but

to allow a general *locus standi* to a petitioner whose land was to be taken compulsorily under a bill. Counsel for the promoters contended that S. O. 133 placed railway companies, whose land was taken, in a different position to an ordinary landowner, and that it was unreasonable that a railway company with whose railway a junction was authorised to be made should be heard against the whole of an omnibus bill, which dealt with many matters in which the petitioning railway company had no interest. The petitioners, failing a decision of the Court in favour of their claim to a general *locus standi*, also claimed to be heard against the transfer of powers to construct the railways authorised by the Rhymney Railway Act, 1888, on substantially the same grounds as those advanced by petitioners (1) and (2) against the bill:

Held, that the petitioners, in addition to the *locus standi* conceded to them against Part II. of the bill (New Railways), were only entitled to be heard against Part III. [Transfer of Powers], and so much of the preamble as related thereto.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petitioners do not allege in their petition, nor is it the fact that any lands, houses, or other property belonging to the petitioners will or can be taken in connection with the railways proposed to be transferred under the powers of Part III. of the bill; (2) the fact that certain property of the petitioners may be taken or interfered with for the purposes of the two railways proposed to be authorised by Part II. of the bill, does not give the petitioners a right to be heard against the bill in respect of the proposed transfer of the powers already granted by the Rhymney Railway Act, 1888, from the Rhymney railway company to the promoters; (3) the fact that the petitioners opposed the bill for the Rhymney Railway Act, 1888, does not entitle them to be heard against the bill; (4) no such competition with the petitioners will result from or be created by the bill as to entitle the petitioners to be heard; (5) the fact that since the said railways were authorised, Parliament has authorised the construction of other railways in the hands of the petitioners for the alleged purpose of affording

accommodation between the Monmouthshire valleys and Cardiff does not entitle the petitioners to be heard against the bill, or as to the necessity or otherwise of the lines authorised by the Act of 1888; (6) the bill does not affect the provisions of the Bute Docks Transfer Act, 1886, referred to in paragraph 12 of the petition, nor are there any agreements such as are alleged to exist in paragraph 13, which would be affected by the bill, so as to entitle the petitioners to be heard; (7) the petitioners have no such interest in the tolls, rates, or charges to be authorised by the bill as to entitle them to be heard; (8) the petitioners are not entitled to be heard on the questions raised in paragraphs 8 and 9 of the petition; (9) while not admitting the statements in the petition, the promoters maintain that the petitioners have no such interest in the subject-matter of the bill, and do not state any facts or reasons which, according to the practice of Parliament, would entitle them to be heard against the bill.

Pope, Q.C. (for petitioners): I claim a *locus standi* on two grounds, first, as being affected by the proposed transfer of powers to construct railways from the Rhymney to the Bute docks company, and secondly as a landowner, whose right to be heard is conceded against provisions of the bill dealing with his land, and who therefore has, by the universal practice of Parliament, a right to be heard against any other part of the bill, whether an omnibus bill or not, which is referred to in his petition.

Bidder, Q.C. (for promoters): It is admitted that you are landowners, and as such we concede you a *locus* against Part II. of the bill, which authorises the making of new railways, which will form junctions with your railways.

Pope: I am as a landowner within the "post case." I contend according to that case, which has never been over-ruled, that the Court cannot limit me as a landowner from roving over any provisions of an omnibus bill. (*London and North-Western Railway (New Works, &c.) Bill, 1868, on the petition of the Lancashire and Yorkshire Railway Co., 1 Clifford & Stephens, 62; Caledonian Railway (Additional Powers) Bill, 1872, on petition of North British Railway Company, 2 Clifford & Stephens, 256; Great Eastern Railway Bill, 1874, on the petition of Owners of Land, &c., in Epping Forest, 1 Clifford and Rickards, 79; Buckinghamshire and Northamptonshire Railways Union Bill, 1875, on the petition of the Great Western Railway Company, ibidem, p. 146; The East and West Yorkshire Union Railway Bill, 1886, on the petition of the North-Eastern Railway Company, Rickards and Michael, 98.*)

Mr. HEALY: Do you mean there is no power in the Referees to limit your *locus standi*, having regard to their own decisions, or having regard to the Standing Orders?

Pope: The practice of Parliament, which prevailed before the institution of the Court, and the practice of the Court has proceeded on the supposition that there is no power to limit the right of a landowner to be heard against the whole of a bill which proposed to interfere with his land.

The *CHAIRMAN:* I remember that in early days that was undoubtedly considered to be the principle governing these cases. Without, however, expressing an opinion now upon that part of your case, the Court would like to hear you upon your other ground of *locus standi*.

Pope: The other ground on which I claim a *locus standi* is against the transfer of the powers of the Rhymney company to the promoters, and the consequent change of interest such conversion would effect to the detriment of the petitioners. The Great Western company are entitled under statute to equal privileges with every other company using the promoters' docks. The proposal is to change the whole character of the line, and is an appropriation by a dock company for itself of powers which at present exist in the Rhymney company. If this were a new line the promoters were making, the petitioners would be entitled to be heard. The policy of the Court has been to allow a discussion by all parties concerned in this group of railway and dock enterprises of any bill affecting their relations to one another.

The *CHAIRMAN:* That is my understanding of the general policy of the Court with regard to this important district of South Wales.

Bidder (in reply): With regard to the claim of the petitioners to be heard against the whole bill as landowners, the "post case" does not apply, for they are not ordinary landowners, but a railway company whose land is taken for the purpose of forming a junction, and they are therefore within the purview of S. O. 133, which, as it now stands, since the insertion in line 6, of the words "such provisions or," has modified the old practice of the Court.

Pope: The decision in the *Caledonian Railway Bill, 1872, on the petition of the North British Railway Company* (2 Clifford and Stephens, 256) decided that a railway company and a private landowner were exactly in *pari materia*.

Mr. BONHAM-CARTER: Subsequently, in the case of the *East and West Yorkshire Union Railway Bill, 1886*, it was held, following the decision in the *Caledonian Company's Bill, 1872*,

that the petitioners were entitled to a general *locus standi*.

Bidder: In those cases the company was seeking to be heard against the proposals that affected them; moreover, the bills were not omnibus bills.

The CHAIRMAN: You are not aware of any decision that over-ruled the "post case"?

Bidder: No, but that case was over-ruled by Standing Order 133, which was passed a long time after the "post case," and which says that "Where a railway bill contains provisions for taking or using any part of the lands, railway, stations or accommodations of another company, or for running engines or carriages upon or across the same, or for granting other facilities, such company shall be entitled to be heard upon their petition against such provisions or against the preamble and clauses of such bill."

Mr. BONHAM-CARTER: It introduces an alternative, and you claim to have that alternative exercised in your behalf?

Bidder: Yes, the Standing Order clearly contemplates that it is a matter of discretion with the Court to grant a general or limited *locus standi*. The "post case" does not apply, and if it did, I submit that it is time it should be over-ruled. On the second point raised by the petitioners as to the transfer, what I said in answer to the Newport petition equally applies here.

The CHAIRMAN: The *Locus Standi* of the Great Western Railway Company is *Allowed* against Part II. and III. of the Bill, and so much of the preamble as relates thereto.

Agent for Petitioners, *Mains*.

Petition of (4) THE PONTYPRIDD, CAERPHILLY AND NEWPORT RAILWAY COMPANY.

Transfer of Power to Construct Authorised Railways to Dock and Railway Company—Competition.

The Pontypridd, Caerphilly and Newport railway company also claimed to be heard on the ground that it would be to the interest of the promoters if they made the railways, as proposed by the bill, to divert traffic coming from the Rhondda and Aberdare valleys, some of which would otherwise probably be sent over their railway to Newport, to the petitioners' own docks

at Cardiff. They admitted, however, that the amount of such traffic would not be large, and the Court disallowed their *locus standi*.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petitioners do not allege in their petition, nor is it the fact that any lands or property belonging to them will be taken or interfered with by the bill, and they have not and do not allege any such interest in the subject-matter of the bill as to entitle them to be heard according to practice; (2) the petitioners are not entitled to be heard against the bill in respect of the proposed transfer of the powers already granted by the Rhymney Railway Act, 1888, from the Rhymney railway company to the promoters; (3) the petitioners are not now entitled to be heard in respect of any objections which might have been urged against the railways authorised by the Rhymney Railway Act, 1888, by persons then entitled to make such objections; (4) no such competition with the petitioners will result from or be created by the bill as to entitle the petitioners to be heard; (5) the bill does not confer any new or additional running powers on the promoters over the Rhymney railways, nor would it enable the promoters to affect the traffic to or from the petitioners' railways so as to enable them to be heard against the bill; (6) the petitioners are not entitled to be heard in support of any application for running powers over the railways proposed to be transferred; (7) the petitioners are not entitled to be heard on the questions raised in paragraph 28 of their petition; (8) while not admitting the statements in the petition, the promoters maintain that the petitioners do not state any facts or reasons which, according to the practice of Parliament, entitle them to be heard against the bill.

Pope, Q.C. (for petitioners): The object of the construction of the petitioners' railway was to shorten the distance from the Rhondda and Aberdare Valleys to Newport by means of the railway itself and of running powers over the Rhymney railway to Caerphilly and thence to Newport over the Brecon and Merthyr Tydfil junction railway. An arrangement was made between the petitioners and the Rhymney company that the gross receipts of the traffic should be equally divided between them. The proposed transfer will make such a change of interest as will affect the present *status* of the petitioners as a railway company, for it will be the direct interest of the promoters

to prevent any traffic going by the petitioners' railway to Newport, but as things stand now there might arise a certain amount of traffic destined for Newport, which would be interchanged with our railway at the point of junction.

The CHAIRMAN: It seems to me that the Rhymney company would not very readily give you that traffic, because they would lose the run over their own line.

Pope: I agree it is not likely to be a substantial amount of traffic.

Bidder, Q.C. (for promoters): The petitioners' line was constructed for the sole purpose of getting hold of coals in the western valleys and taking them to Newport, instead of their going to Cardiff, which is the natural out port for coal from the Aberdare and Rhondda Valleys. The Rhymney company in 1888 obtained power to make a line to tap the Sirhowy valley. It would be impracticable for the proposed line to take coal to Newport, its sole purpose being to divert traffic to Cardiff, and the petitioners cannot have any possible interest as to whether the Rhymney company or the promoters are the owners of a line to carry coal from Monmouthshire to Cardiff.

The CHAIRMAN: The *Locus Standi* of the Petitioners must be *Disallowed*.

Agents for the Petitioners, W. & W. M. Bell.

Petition of (5) LORD TREDEGAR.

Transfer of Powers to construct Railway—Extension of Time for Construction of Railways, but not for Compulsory taking of Lands—Landowner not having received Notice to Treat—Injury to Competing Docks by Diversion of Traffic—Ground Landlord and Shareholder.

The bill was also opposed by Lord Tredegar

(1) as owner of land across which the railway, the power to construct which was transferred by the bill to the Bute docks company, was to be made; (2) as ground landlord of and a large shareholder in the Newport docks, from which he alleged that it would be the interest of and in the power of the promoters under the bill to divert traffic to their own docks at Cardiff. As regards the first ground (1), the petitioner alleged that although the bill did not extend the time for the compulsory taking of lands for the railway authorised by the Rhymney Railway Act, 1888, it extended

the period for its construction, and made that construction more probable than it would have been in the hands of the Rhymney company, from whom he had not received any notice to treat. With regard to his claim to be heard (2) as ground landlord of and largely interested in the Newport docks, the arguments with reference to diversion of traffic to the Bute docks were similar to those advanced on behalf of (1) and (2) the Barry and Newport dock companies (*q. v. supra*). It was contended on behalf of the promoters that the transfer of powers proposed by the bill did not affect his *status* (1) as a landowner, and that (2) the bill would not materially affect the Newport docks or his interest in them:

Held, without specifying upon which of the two above-mentioned grounds his claim to be heard was admitted, that he was entitled to the same *locus standi* as the dock companies, namely, against Part III. of the bill (Transfer of Powers), and so much of the preamble as related thereto.

The *locus standi* of the petitioner was objected to on the following grounds: (1) no new works are proposed to be authorised by the bill affecting the petitioner's property, nor is any extension of time thereby sought for the taking of the lands of the petitioner; (2) the fact that the railways authorised by the Rhymney Railway Act, 1888, the powers for the construction of which are by the bill to be transferred in certain events to the promoters, are in a great measure to be constructed through the petitioner's estate does not (whether the petitioner did or did not oppose in Parliament the bill for the Rhymney Railway Act, 1888) give the petitioner any right to be heard against the bill; (3) the petitioner is not entitled to be heard with respect to the powers sought by clause 18 of the bill for extending the time for the construction of the works authorised by the Rhymney Railway Act, 1888; (4) the interest alleged in paragraph 6 of the petition that the petitioner has in the Park Mile railway or in the traffic from the Monmouthshire valleys passing over the said railway is too remote and does not entitle the petitioner to be heard against the bill. Moreover, the bill does not propose to authorise any new powers prejudicial to that interest; (5) the petitioner is not entitled to be heard in respect of any

interest he may have as a shareholder in any dock company at Newport, or in respect of any alleged interest in the prosperity of the town or docks of Newport; (6) the fact that the petitioner would have objected to the authorisation of the railways sanctioned by the Rhymney Railway Act, 1888, if that Act had been applied for by the promoters is irrelevant. The said railways are now authorised, and the petitioner is not entitled to be heard with respect to the transfer of the powers for their construction from the Rhymney railway company to the promoters; (7) the fact that since the said railways were authorised, Parliament has authorised the construction of other railways in the hands of the Great Western railway company for the alleged purpose of affording accommodation between the Monmouthshire valleys and Cardiff does not entitle the petitioner to be heard against the bill, as to the necessity or otherwise of the lines authorised by the Act of 1888; (8) the petitioner is not entitled to be heard against the bill on the ground of any alleged competition by the promoters with the docks at Newport, and it is not the fact that any new competition as affecting the petitioner or the said docks will arise by means of the bill; (9) the petitioner is not entitled to be heard on the question raised in paragraph 13 of his petition; (10) while not admitting the statements in the petition, the promoters maintain that the petitioner does not state any facts or reasons which according to the practice of Parliament entitle him to be heard against the bill.

Cripps, Q.C. (for petitioner): Lord Tredegar is entitled to a *locus standi* on two grounds. First of all he is a landowner, over whose land the bill proposes to give the Bute docks company the power to construct railways; and, secondly, he is the ground landlord of all the dock interests at Newport, and a very large shareholder in the docks, from which it will be to the interest and in the power of the Bute docks company to divert traffic if the bill passes. As a landowner the petitioner has opposed every bill seeking to get railway access across his land brought forward by the Bute docks company; but when the powers were sought by the Rhymney railway company he did not oppose, as in the hands of the Rhymney company they would not prejudicially affect his interests. One of the lines proposed to be transferred passes for about two miles through his land. The promoters have not given him notice to treat, and they are not entitled to deal compulsorily with his land.

The CHAIRMAN: The dock company are seeking power to construct a railway upon

your land, and they will have to give you notice.

Bidder, Q.C. (for promoters): I was not bound to give a landowner's notice to the petitioner, for I do not seek to obtain compulsory powers over his land, because so far as Lord Tredegar's land being compulsorily taken is concerned, that was settled in 1888 when the Rhymney company obtained leave to do so. The bill is for a mere transfer of powers from one company to another, and the petitioner must show that he is *primâ facie* in a worse position should the bill pass.

The CHAIRMAN: At the present time compulsory powers are given to the Rhymney over the petitioner's land. A certain time is limited for the exercise of those powers, and if they are not exercised the land will be free. The promoters are now coming to take up those powers which might otherwise fall to the ground, and also to take power to extend the time for constructing the railway, although not for taking land compulsorily.

Cripps: The promoters have no compulsory powers against me.

Bidder: Is it possible for this Court to act upon a suggestion that as things stand at present the Rhymney company may not construct the line, and the powers may fall to the ground?

Mr. HEALY: The whole foundation for your bill is that they may not, and probably will not, do it themselves.

Bidder: No doubt, or that they may delay the doing of it. I do not say that the petitioner could in no case have a word to say against a transfer, but I am protesting against the hold proposition that because the petitioner is a landowner, therefore, without any thing more being proved, he has a right to be heard against the transfer.

The CHAIRMAN: I understand that the Rhymney company have not given the petitioner notice to treat, and, therefore, the land still belongs to him.

Cripps: That is so. The promoters have now no compulsory powers against me.

Mr. CHANDOS-LEIGH: As a landowner, Lord Tredegar wishes to go before the Committee to say that he is in a worse position by the proposal of the bill, and this he alleges in paragraph 18 of his petition.

Bidder: I admit that if the transfer from one company to another is in any way shown to be detrimental, then the petitioner must have a *locus standi*.

The CHAIRMAN: The *Locus Standi* is Allowed.

Agents for Petitioner, Rees & Frere.

Agents for Bill, Grahames, Currey & Spens.

CORK AND FERMOY AND WATERFORD
AND WEXFORD RAILWAY BILL.Petition of (1) THE GREAT SOUTHERN AND
WESTERN RAILWAY COMPANY.24th April, 1890.—(Before Mr. PARKER, M.P.,
Chairman; Mr. SHIRESS WILL, Q.C., M.P.;
Sir GEORGE RUSSELL, M.P.; Mr. COMPTON,
M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

*Construction of Railway Forming Junctions with
Railway of Petitioners—Compulsory Powers of
Taking Land—General Locus Claimed by Rail-
way Company as Landowners—Competition
between Local and Through Railway by means
of Running Powers—General Locus Claimed.*

The bill empowered the promoters to construct two railways, which, by means of junctions and running powers over the lines of two railway companies which intervened between the two railways authorised by the bill, would form a competitive route with the railway of the petitioners. The bill also took compulsory powers over certain lands belonging to the petitioners at Cork and Fermoy, and, in addition, one of the proposed railways was laid out to cross the petitioners' railway near Cork. The petitioners claimed a general *locus standi* against the bill on both grounds, that of competition and as landowners. The promoters conceded them a limited *locus standi* on the ground of competition against one of the proposed railways, and a limited *locus standi* against the provisions of the bill which empowered them to interfere with the petitioners' lands and railway:

Held, however, that inasmuch as the proposed railways would, by means of the running powers conferred on the promoters by the bill, form a through route in competition with the petitioners' railway, the bill must be regarded as forming one scheme, and that the petitioners were entitled to an unlimited *locus standi* against it on the ground of competition, as well as in their capacity as landowners.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petitioners are only entitled to be heard (if at all) upon

their petition under S. O. 133 and against so much of the bill as relates to the Cork and Fermoy section of the proposed undertaking, and not further or otherwise. The railways of the petitioners lie at a distance of sixty miles, or thereabouts, from the nearest point of the Waterford and Wexford section, and are separated from it by the railway lines and properties of two or more wholly distinct and independent companies, in which, or some of which, the petitioners have no right or interest whatever; (2) no running powers are taken or other facilities sought over the lands, railway stations, or accommodations of the petitioners, save for the purpose of effecting junctions or in connection therewith, and solely in relation to the Cork and Fermoy section. No such competition can or will arise as alleged in the petition between the railways proposed by the bill and the railways of the petitioners; (4) the running powers contained in the bill are over or affecting the railways of other companies and not of the petitioners, who have no sufficient interest entitling them to be heard in relation thereto; (5) the petitioners object to alleged heavy taxation upon the ratepayers of the city of Cork and upon the ratepayers and cesspayers of different baronies as being necessarily involved in certain proposed guarantees, but their petition does not show in what respect the petitioners represent such ratepayers and cesspayers respectively, and does not allege that the petitioners themselves are or will be subject to taxation in any of those localities or otherwise under the bill; (6) the petitioners are not the road, local, or other authority in the case of the roads or any of them referred to in the bill, and do not allege that they are in any wise interested in such roads; (7) save as aforesaid the petitioners have no sufficient right or interest entitling them to be heard according to practice against all or any of the provisions of the bill.

Cripps, Q.C. (for petitioners): The line of the petitioners runs between Cork and Dublin. The promoters take power to construct two lines, one from Cork to Fermoy, the other from Waterford to Wexford and Roslan; they also take powers to make arrangements with the Fermoy and Lismore, and the Waterford, Dungarvan and Lismore, which intervene between the two proposed lines. Both at Cork and Fermoy they take land of ours, in addition to crossing our line just outside Cork. There is no dispute that land of ours is taken at Cork. (*London and North-Western Railway (New Works, &c.) Bill, 1868, on the petition of the Lancashire and Yorkshire Railway Company, 1 Clifford & Stephens, 62.*)

Mr. SHIRESS WILL: Then there is an end of the case.

Cripps: Besides this, they take power to run over the Fermoy and Lismore line which we work.

Mr. SHIRESS WILL: Early in the history of this Court the Referees laid down in what has been called the "post case," that if a landowner's land was taken by an omnibus bill, he had a right to be heard against the whole of the bill.

Cripps: The promoters say we should only be heard against the Cork and Fermoy line, and object to our being heard against the Waterford and Wexford line.

Mr. SHIRESS WILL: It will be urged that your *locus standi* should be confined to one line; your case is that though the thing is made up of pieces it is really one system.

Cripps: Yes, clearly.

Pembroke Stephens, Q.C. (for promoters): This is not one scheme made up of different pieces; the two proposed lines are in different parts of Ireland altogether, separated by two independent railways.

The CHAIRMAN: You take powers to enter into a working agreement with the intervening railway companies.

Stephens: Yes, but not compulsory powers.

Mr. CHANDOS-LEIGH: The two separate railways are in one bill; there are the same directors and the same promoters. It is all one thing. We must look to the ultimate object of the proposed lines, and we can see what that is.

Mr. SHIRESS WILL: The petitioner says that you have given him notice that some of his land is to be taken, therefore he claims a landowner's *locus standi*; his argument is, you must not limit me to the particular part of the scheme where my land is, because the whole thing is one scheme, though made up of different pieces.

The CHAIRMAN: This is stronger than the case of an omnibus bill. It is not a bill containing a number of miscellaneous pieces of line in various parts of the country unconnected with one another, but it is on the map apparently a continuous scheme, and there is a *prima facie* case that the whole bill should be treated as one matter.

Stephens: Suppose you are proposing to make a line from London to York: if you cannot get a particular man's field the whole scheme fails; therefore, the landowner's field being a necessary part of the whole scheme, the landowner is given a *locus standi* against the whole scheme. Take the case of a line with several branches: a landowner's house or land is proposed to be

taken on one of the branches—he has an unlimited *locus standi* against the bill; suppose the particular branch that affects him is cut out of the bill before it comes on: his unlimited *locus standi* is gone and he could not be heard before the Committee.

Mr. CHANDOS-LEIGH: He could appear, but when he began to object to the other branches, the Committee would say: "No; you are confined to the four corners of your petition."

Stephens: That is the meaning of a landowner's *locus*; it is theoretically a *locus standi* against the whole bill; it is practically a *locus standi* against as much as affects him. The petitioners have nothing to do with the proposed line between Waterford to Wexford, they have no connection within 50 or 70 miles of it, and there is no competition except between Cork and Fermoy. We do not take running powers over the two intervening lines, but only power to make arrangements.

The CHAIRMAN: You are seeking power to go over the Fermoy and Lismore line.

Stephens: Yes; merely power to make agreements, and without which we cannot get beyond Fermoy. A *locus standi* against the Cork and Fermoy line will amply protect the petitioners. They have no interest and nothing to say in respect of the Waterford and Wexford part of the bill. This is not a continuous scheme, because we have nothing but the power of agreement with regard to the intervening lines.

The CHAIRMAN: An unlimited *Locus Standi* is Allowed in this case.

Agents for Petitioners, *Sherwood & Co.*

Petition of (2) THE NEW ROSS HARBOUR COMMISSIONERS AND MERCHANTS, INHABITANTS, &c., OF NEW ROSS.

Interference by Railway Bridge with River forming access to Harbour—Harbour Commissioners—Traders and Inhabitants—Injury to Traders' Interests—General Locus claimed—S. O. 134 [Municipal Authorities and Inhabitants of Towns].

Railway, No. 2, authorised by the bill was so laid out as to cross the river Barrow in the neighbourhood of the town of New Ross by a bridge with a low headway. The New Ross Harbour Commissioners, under whose jurisdiction the river was at the site of the proposed bridge, and certain merchants and inhabitants of New

Ross, representing three-fifths of the ratable value of the town, claimed a *locus standi* against the bill not limited to discussion of the mode of construction of the bridge, but generally to argue against the expediency of authorising the railways proposed by the bill. The Court, having pointed out during the arguments in favour of petitioners (1) (*supra*) that the bill formed one scheme of through railway communication, granted an unlimited *locus standi* against the bill to the petitioners.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the allegations and complaints in their petition relate to the construction and apprehended effects of railway No. 2 authorised by the bill, or so much thereof as deals with the construction of an opening bridge across the river Barrow, but the petitioners are not the proper authority or persons (if any) to be heard on such matters or in opposition to the bill; (2) the New Ross Harbour Commissioners in paragraph 4 of their petition distinctly allege that the site of the proposed bridge is within the limits of their jurisdiction, and accordingly claim to be heard, but the Waterford Harbour Commissioners in their petition (paragraph 10), on the contrary, allege that "the exclusive jurisdiction of the port and harbour of Waterford, which limits include the site of the proposed bridge at the junctions of the rivers Suir and Barrow," has been enjoyed by them for the last fifty years and upwards, "and the *locus standi* of the Waterford Harbour Commissioners has not been objected to. It is contrary to the spirit and practice of Parliament, or of the Referees Court, to duplicate oppositions and to grant a hearing against a bill to rival sets of petitioners, each claiming rights contradictory of the other, yet each based upon one and the same foundation or allegation or injury; (3) the town of New Ross is situated at a distance of ten miles, or thereabouts, from the nearest works of the proposed railway or site of the proposed bridge, and the individual petitioners signing the petition have no sufficient interest according to practice entitling them to be heard even if they signed in sufficient numbers; (4) the population of New Ross is between 6,000 and 7,000, but only 214 signatures are attached to the petition. In any case the individual petitioners would have no right or claim to be heard as to

questions of interference with navigation or the consequence thereof, apart from, or in addition to, the right or claim to be heard (if any) of the New Ross Harbour Commissioners; (5) the Commissioners complain of the possible injury or obstruction to steamboats, sailing vessels, barges, or other craft, using or navigating the river Barrow, but do not allege that they themselves, or any of them, own, navigate, or are otherwise interested in steamboats, sailing vessels, barges, or other craft using or navigating the river; (6) the allegations and suggestions contained in paragraph 18 of the petition, are inconsistent with the allegations made in other paragraphs of the petition, and show the same to be unfounded or unreliable as affording grounds of *locus standi*; (7) the petitioners respectively have no sufficient interest, according to practice, entitling them to be heard. The petition, moreover, does not purport to have been signed, sealed, or authorised at any meeting, either of the New Ross Harbour Commissioners or of the individuals signing the petition, and is not in conformity with the rules and practice of Parliament.

Edgard, Q.C. (for petitioners): Railway No. 2 authorised by the bill is laid out so as to cross the river Barrow close to its junction with the river Suir, by a bridge with fixed arches having a headway of only 12 feet above high water level. The Harbour Commissioners were appointed under the New Ross Port and Harbour Amendment Act, 1861, to regulate and improve the navigation of New Ross port and harbour, which includes the site of the proposed bridge. The Commissioners are interested solely in the collection of dues, and any diminution of their revenue would affect them as Commissioners to that extent. The interest of the traders differs in this respect, that the trade of the town is dependent to an unlimited extent on a free and unimpeded navigation.

The CHAIRMAN: If the petitioners were allowed a *locus standi* in regard to the bridge that would be all they would require.

Edgard: No, we want to oppose this section of the line, and show that it is not necessary in the interests of the traders, but that it would inflict damage upon them.

Mr. SHIRES WILL: What would be argued against you would be that your *locus standi* should be confined to the construction of the bridge, and that you should not be heard against the policy of the whole line.

Edgard: I submit that we have a right to go into the policy if it affects us, in addition to the specific injury done to us by the construction

of the bridge. The petitioners, other than the New Ross Harbour Commissioners, claim a *locus standi* under S. O. 134, whereby the inhabitants of a district, alleging that the district would be injuriously affected by the bill may, in your discretion, be allowed a *locus standi*. The Waterford Commissioners have equal jurisdiction as regards their special interest, which however is quite distinct from the New Ross Commissioners' interest, to a point just below where the bridge is proposed to be placed.

Mr. SHIRESS WILL: You say the same water is within the limits of the two Harbour Commissioners for two distinct objects. Under the Pier and Harbour Act each harbour authority has its limits strictly defined, and is given jurisdiction over those limits. I never heard before of two harbour authorities having jurisdiction over the same water. What are your limits?

Ledgard: I will read them from our Act, sect. 29: "From the junction of the river Barrow with the river Suir, up to the entrance of the Canal at St. Mullin's on the river Barrow, and to the dock quay of Innistogie on the river Nore."

The CHAIRMAN: It is conceivable that the interest of the Waterford Commissioners might be conflicting with yours as to the building of the bridge.

Ledgard: Yes. Assuming that the Waterford Commissioners have a *locus standi* that is not to oust us, as our interest is absolutely different, and we are entitled to be heard upon our case. If the Waterford Commissioners are allowed a *locus standi* and we are not, they might be settled with long before the case comes on. Even if you hold that the Ross Commissioners have no right to be heard, you must hold that these traders and inhabitants are entitled to be heard. They represent three-fifths of the total ratable value of the town.

Mr. SHIRESS WILL: The point is whether your *locus standi* ought to be limited.

Ledgard: Probably the main objection would be to the construction of the bridge, but in addition to that we are entitled to contend upon the merits that there is no public case for the line.

Pembroke Stephens, Q.C. (for promoters): You have nothing to do with this at all. The parties who have to do with it are the Waterford Harbour Commissioners, and we have admitted their *locus standi* upon their statement that this part of the river is within their jurisdiction.

Ledgard: I have nothing to do with them.

Mr. SHIRESS WILL: They may allege anything they please; you say your Act of Parliament speaks for itself.

The CHAIRMAN: We have had the words quoted from the Act, which gives the Ross Commissioners jurisdiction, and it was shown on the map that this was within their jurisdiction.

Ledgard: The question is whether we should be limited to the bridge and its effect upon the navigation.

The CHAIRMAN: Upon that point you would be limited by your petition. It is entirely relating to the bridge, except that there is a suggestion that the bridge might be in a different part of the river altogether.

Ledgard: We also say that there is no public case for the line. We ought to be heard, as inhabitants, to show how we are affected by the bridge, and by the undertaking taken altogether. I never heard that inhabitants of a district were not entitled, under S. O. 134, to go into the general question.

Stephens (in reply): There are two sets of petitioners raising the same question, and saying that the proposed bridge is within the limits of their jurisdiction, namely, these petitioners and the Waterford Commissioners, whose *locus* is not objected to. It is not the practice of the Court to give a *locus standi* to two petitioners who say the same thing.

The CHAIRMAN: Not if the subject-matter which they deal with is the same, but it is contended here that the two harbour authorities may have conflicting interests, or at all events separate interests.

Mr. SHIRESS WILL: The question is whether this particular piece of water upon which the bridge is proposed to be built is within the limits of the Act. If it is, there is an end of the case.

Sir Theodore Martin, parliamentary agent: I represent the Waterford Harbour Commissioners. The statement in their petition was made under erroneous information. The jurisdiction between the points in question is in the New Ross Commissioners.

Stephens: This is only a bridge crossing a stream at a particular point, and the petitioners' jurisdiction does not extend into the county of Wexford or into the county of Cork, therefore if you think that there is interference with them in this river, give them a *locus standi* so far as regards the bridge within their own jurisdiction, but not further.

The CHAIRMAN: An unlimited *Locus Standi* is Allowed.

Agents for the Petitioners, *Grahames, Currey and Spens*.

Petition of (3) THE WATERFORD BRIDGE COMMISSIONERS.

Proposed Railway Bridge Across River—Owners of Existing Road Bridge and Ferry Rights—Competition and Abstraction of Traffic—Invasion of Ferry Rights—Obstruction of Access to Ferry by Level Crossing—General Locus Claimed.

The proposed construction of a railway bridge across the river Barrow was also opposed by the Waterford Bridge Commissioners on account of (1) invasion of ferry rights, which the petitioners had purchased at the time of the construction of their road bridge, the site of the proposed bridge being included in the limits within which they had exclusive rights of ferry; and (2) competition and abstraction of passenger and goods traffic, which was now brought across the river over the petitioners' bridge into the town of Waterford, but which railway No. 2, authorised by the bill, would bring across the river into the town of Waterford itself. The petitioners further claimed a *locus standi* against a provision in the bill, empowering the promoters to cross a road forming an access to one of their ferries, and a limited *locus standi* was conceded to them on this point. The petitioners contended that they were entitled to a general *locus standi* on grounds (1) and (2) to dispute the necessity of the railways authorised by the bill on public grounds:

Held, as in the case of the other petitioners, that they were entitled to be heard generally against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege or show that under the provisions of the bill any property rights or interest of the petitioners can be so taken or interfered with as to entitle them to be heard against the bill, according to practice; (2) the Act 26 Geo. III., referred to in the petition, was passed in the year 1786, and accordingly long before the introduction of railways into Ireland, and its provisions were not, and are not,

intended to obstruct or defeat the introduction from time to time of new and improved methods of communication. The bill does not propose to construct any road bridge, or to establish any ferry across the river Suir in competition with the bridge and ferry of the petitioners, and the petitioners have no statutory, common law, or other right as regards the said river, entitling them to be heard against a bill authorising the construction of a railway, or otherwise on the ground of competition; (3) no ferry has in fact been maintained or established by the petitioners at or near the point where the intended railway bridge will cross the river; and the bridge is capable of being constructed and maintained without interfering with the alleged ferry rights and ferry limits of the petitioners; (4) the petition does not accurately describe or set forth the facts with regard to ferries and bridges over the river Suir, a bridge or bridges having been already authorised by Parliament connecting the railways on the north and south banks of the river Suir, against the bill for which purpose the petitioners sought to be heard, but their *locus standi* was disallowed; (5) the bill does not propose to terminate, alter, or effect any of the contracts or agreements (expired or unexpired), which are referred to in the petition as existing or having been made between the Waterford and Limerick railway company, or the Waterford, Dungarvan and Lismore railway company respectively, and the petitioners; (6) the two railway routes between Cork and Waterford, referred to in the petition, are in both cases routes for traffic intended for and stopping at Waterford, or originating at Waterford, as the case may be, and will not be interfered with under the bill. Those routes respectively serve a different purpose and a different traffic, from the purposes and traffic which the railways authorised by the bill are intended to accommodate; (7) the apprehensions expressed in the petition as to the opening or working of the bridge of the petitioners are unfounded and misleading; (8) the other grounds of objection and arguments set forth in the petition are altogether vague and general. The real object of the petition (as seen by paragraphs 15 and 16) is to obtain compensation for alleged competition, and to this the petitioners, under the practice of Parliament, are not entitled. Moreover, such a claim, even if it could be maintained, is founded upon the alleged consequences of passing the bill, and is accordingly matter for clauses and not of objection to the principle of the bill; (9) the petition does not contain any allegation, or disclose any grievance which, according to the practice of Parliament, is sufficient to entitle the

petitioners to be heard against all or any of the provisions of the bill.

Saunders, Q.C. (for petitioners): By the Act of 26 Geo. III., which empowered us to build our bridge, we were either to compensate the owners of the ferry for their loss of tolls by the competition of our bridge, or to purchase their ferry rights, and we purchased their ferry rights. The Act authorised us from the time we purchased the ferry to maintain the same or other ferries with ferry-boats to ply for hire across the river, and also enacted that the ferries should not be established higher up the river than Bilberry Rock, nor lower down than St. Catherine's Pill, both on the south side of the river; there are no limits as to where the ferry should be on the north side. The proposed bridge crosses at Bilberry Rock, which extends about a quarter of a mile, and the whole of Bilberry Rock is within our ferry limits. It was laid down by the Irish Court of Queen's Bench in 1856 that provided we started our ferry from the south of the river between Bilberry Rock and St. Catherine's Pill, we could go to any point on the north side of the river, and it is possible for the promoters, according to the limits of deviation, to interfere with our ferry rights and limits. Our second ground for a *locus standi* is that this bridge cannot be constructed as proposed, so as to be free from danger to our bridge, as it is only 1,300 feet away, and also owing to the size of the steamers which pass up the river, and the strength of the tides and force of the wind which are often very violent at this part of the river.

The CHAIRMAN: You see what they say in paragraph 4 of the objections.

Saunders: The case they refer to, the *Dublin, Wicklow and Wexford Railway Bill*, 1878 (2 Clifford & Rickards, 89), was very different to this case. The bridge there was about three-quarters of a mile beyond Bilberry Rock, and the argument mainly turned upon the fact that it was so far above our bridge that we were not entitled to a *locus standi*. In this case the limits of deviation clearly come within the statutory limits of our ferry, and the promoters will abstract traffic from us.

The CHAIRMAN: Having bought up the ferry rights, you not only got the right to make a bridge, but the exclusive right to the ferry within certain limits?

Saunders: Yes; only within uncertain limits on the north.

The CHAIRMAN: In the case to which you referred it was argued that there could not be competition of a character to give a *locus standi* between a railway bridge and a road bridge.

Mr. SHIRESS WILL: I distinctly differ from any such proposition.

Saunders: There are cases where owners of bridges have been heard against railway companies, such as the case of the *Greenwich and Milwall Subway Bill*, 1877 (2 Clifford & Rickards, 23). The real point is whether the proposed bridge is to serve the same purpose as the ferry, and whether it is going to abstract the traffic.

Mr. CHANDOS-LEIGH: I see the late speaker's counsel used almost your own words: "Is not the question whether the subway will abstract traffic from the existing ferry?"

Saunders: There is another case, the *North and South Woolwich Subway Bill*, 1884 (3 Clifford and Rickards, 447).

The CHAIRMAN: I think it is a sound dictum of the late speaker's counsel, and that it turns upon the scale upon which traffic is abstracted.

Saunders: The traffic abstracted would be very considerable, for two of the main railways at Waterford have their terminus on the north side, the opposite side from the town, and the traffic at present has to be brought into the town over our bridge.

The CHAIRMAN: Both the goods shed and the railway terminus are as close to the bridge as they could possibly be.

Saunders: Yes; the Waterford and Limerick railway take certain traffic across the river and pay us £320 a year for commuted tolls. We take tolls upon all the remainder of the traffic, including passengers and cattle across the bridge from their station, and also all traffic for the town of Waterford. By this bridge we should lose a considerable amount of revenue. The question is whether there is a sufficient public case made for depriving us of these tolls.

The CHAIRMAN: Your petition mainly relates to the bridge and not to the general project of the railway. Would you be content with a limited *locus standi*?

Saunders: No. We ask to be allowed to go before the Committee, and say, "Do not pass this bill, involving this danger and this loss of traffic to our bridge, unless a case of paramount importance is made out." Another point on which we ask for a *locus standi* is this: At Abbey Church, on the north of the river, three-quarters of a mile below our bridge, there is a pier, and we have a ferry actually in operation crossing the river there. The sole access to the pier is a road which they propose to cut off by crossing it on the level. This road is maintained by us, and leads nowhere else.

Pembroke Stephens, Q.C. (for promoters): We concede that you are entitled to a *locus standi* with respect to interference with that access.

Saunders: This is an important part of their scheme. It is part of their through line, and their scheme would break down but for this line, and I submit that I have a right to be heard against the principle of constructing the railway.

Mr. SHIRESS WILL: You say if your opposition were confined to the question of the bridge, your hands would be so tied that your opposition would be practically useless.

Saunders: Yes; it would only be a clause opposition after the whole of the damage had been authorised.

Stephens (in reply): I agree to the petitioners having a hearing against the particular works clause, which does mischief to the access to the ferry at Abbey Church, but I object to their having any general *locus standi* in respect of the bill. As to the difficulties in navigation, the Waterford Harbour Commissioners will be before the Committee, and if there is anything to be said they are the people to say it. With reference to the question of competition, in the *Dublin, Wicklow and Wexford Case* (2 Clifford and Rickards, 89), the Bridge Commissioners raised every possible point, but their *locus standi* was disallowed. The combination of railways is the same; there is the same crossing of the river; there is the same interference of traffic, for it is equally traffic going over the road bridge that will be abstracted. As regards the question of principle whether a toll bridge should be heard against a railway company proposing to construct a new bridge, on the ground of competition, I refer to the *London and South-Western Railway (Various Powers) Bill*, 1890, *infra* p. 36. Unless there are special circumstances, bridge trustees will not be heard against a railway crossing a river, that being a new and improved mode of communication, and not *in pari materia*.

Mr. SHIRESS WILL: I should have thought that if the same traffic would be carried and passengers would be abstracted, so that the Commissioners would suffer in pocket, those would be special circumstances entitling us to admit them on the ground of competition.

The CHAIRMAN: Can any one else put a ferry there?

Stephens: No, and if they could they could not land their passengers, for it is an inaccessible shore, and, therefore, there is no practical value in these ferry rights.

The CHAIRMAN: Speaking for myself, it does not seem to matter whether the ferry is practicable or not. The Bridge Commissioners, when they bought the ferry rights, acquired

the sole right of carrying people over the river within the prescribed limits.

Stephens: Assuming that they have a right to be heard against the invasion of their ferry limits, how can that give them a *locus standi* against the construction of railways in County Wrexford or County Cork, or to our railway scheme taken as a whole?

The CHAIRMAN: The *Locus Standi* of the Petitioners is *Allowed* without limitation.

Agents for Petitioners, *Martin & Leslie*.

Agents for Bill, *Holmes, Greig & Greig*.

CROYDON AND CRYSTAL PALACE RAILWAY BILL.

Petition of THE SOUTH EASTERN RAILWAY COMPANY.

13th March, 1890.—(*Before Mr. PARKER, M.P., Chairman; &c., &c.*)

Railways — Competition — General Locus — Practice.

The bill was opposed by the South Eastern railway company on the ground of competition, both of a local character and also for London traffic by means of traffic facilities, given by clause 51, and powers given by clause 55, to the London, Chatham and Dover railway company, to enter into arrangements for the construction, use, management and maintenance of the proposed line by that company. The promoters denied that there would be more than an improvement of existing competition at the most effected by the bill, and further asked that the *locus standi* of the petitioners, if granted, might be limited to being heard against clauses 51 and 52, under which alone competition could be established. The Court, however, after calling the attention of the promoters to the decision in the *Beaconsfield, Uxbridge and Harrow Railway Bill*, 1882 (3 Clifford & Rickards, 126), and the *Leeds, Church Fenton and Hull Junction Railway Bill*, 1883 (*Ib.*, p. 298), in accordance with its practice in cases of competition, *Allowed* the Petitioners a general *Locus Standi* against the Bill.

The arguments were of the usual character in cases of competition, and the case was of little value as a precedent.

Worsley Taylor, appeared for the Petitioners; *Balfour Browne, Q.C.*, for the Bill.

Agents for Petitioners, *Cooper & Sons*.

Agents for Bill, *Rees & Frere*.

ELECTRIC LIGHTING PROVISIONAL ORDERS (No. 11) BILL. (CHATHAM, ROCHESTER AND DISTRICT ELECTRIC LIGHTING ORDER.)

Petition of WALTER RICHARD SOLMAN.

23rd July, 1890.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Bill to confirm Provisional Order extending Area of Supply of Electric Lighting Company—Shareholder—S. O. 62-66 [Meetings of Proprietors to Approve Bills Empowering Companies to do certain Acts], How far applicable to Bills confirming Provisional Orders—S. O. 131 [In what Cases Shareholders to be heard]—S. O. 132 [Dissenting Shareholders to be heard]—S. O. 151 [Proceedings on Bills for confirming Provisional Orders]—S. O. 208A [Provisional Order Bills to stand referred to Committee of Selection, &c.]—Practice.

The bill confirmed a Provisional Order made by the Board of Trade authorising the Chatham, Rochester and District Electric Lighting company, which was a company registered under the Companies Acts, 1862 to 1886, to supply energy to the whole of the area included in the First Schedule to the Order, which was a larger area than that at present supplied by the company. The petitioner was a shareholder in the company, and objected to the extension of the area of supply by the bill as likely to be unprofitable and to necessitate the raising of additional capital, which the company's financial position would not enable it to do. He claimed a *locus standi* in order to urge these considerations upon the Committee on the bill. His *locus standi* was objected to because he had no interest distinct from the general interests of the company, so as to bring him within S. O. 131, and was clearly not entitled to be heard under S. O. 132, not having dissented at a public meeting called in pursuance of S. O. 62 to 66. To this he replied that no such meeting had been held, bills to confirm Provisional Orders not being within the scope of those Standing Orders, although

a meeting of the company had been held, at which a general approval had been expressed of obtaining statutory protection for the company, but no notice had been given to him, such as was required by S. O. 62 to 66, that the question of the extension of limits of supply would be submitted to the shareholders. He had, however, objected to such extension before the Board of Trade, and had, therefore, he contended, brought himself within the spirit of the S. O. 132; and he complained that it was a hardship that he should be placed in a less favourable position as a petitioner, because the proceedings were by Provisional Order instead of by private bill. The Court were of opinion that S. O. 62 to 66, and S. O. 132 did not apply to proceedings by Provisional Order; and that the only claim the petitioner could advance to a *locus standi* was under S. O. 131, which was made generally applicable to bills to confirm Provisional Orders by S. O. 151 and 208A; but that the petitioner did not show that his interests, as affected by the Order, were distinct from the general interests of the company; and that his *locus standi* must accordingly be refused.

The *locus standi* of the petitioner was objected to on the following grounds: (1) the petitioner is not affected by the bill and Order in any way, which will entitle him to be heard against them according to the practice of Parliament; (2) the petitioner is a small shareholder in the company and he has no right to be heard, as his interests as affected thereby is not distinct from the general interests of the company; (3) the petition does not disclose any ground of objection to the bill or Order which, according to the practice of Parliament, entitles petitioner to be heard against the same.

Balfour Browne, Q.C. (for petitioners): The petitioner is a shareholder in the company, and the bill proposes to make the undertaking very much larger and far more speculative in its character than it now is, and he therefore objects to the undertaking being altered from what he did subscribe to, to something he did not subscribe to.

The CHAIRMAN: Had he not an opportunity of dissenting at the meeting?

Browne: There has been no meeting since the Order was granted; there was a meeting

in November, 1889, at which the petitioner was not present, and he never got any notice that at that meeting the extension would be considered at all. He afterwards found that a report of the directors was presented to the shareholders, in which it was stated that the necessary steps were being taken to obtain statutory protection for the shareholders' property by a Provisional Order; this notice was quite consistent with their merely seeking to promote an Order that would confirm the articles of association; but when the petitioner got notice that an application for the Order had been made to the Board of Trade he, through his solicitors, protested against it.

Mr. SHIRESS WILL: Have the Standing Orders, which require a meeting to be called, any bearing?

Browne: I do not think they apply to this particular case.

Mr. SHIRESS WILL: Are not we bound by S. O. 131 as to the interests of a shareholder affected being distinct from the general interests of the company?

Browne: I cannot conceive that Parliament intended that shareholders in a limited company, though they have taken every means of protesting against the proposal of the directors, should not be heard against the Common Seal.

Mr. SHIRESS WILL: Does not S. O. 63 apply to such a case? It relates to any bill which enlarges the articles of association of a company formed under the Act of 1862.

Browne: That is applicable to a private bill, but not to a bill like the present, promoted by the Board of Trade, to confirm Provisional Orders, which bill has not to be referred to the Examiner at all.

Mr. CHANDOS-LEIGH: We carefully considered this Standing Order two years ago. I do not think it can be said to apply to a Provisional Order at all.

Mr. SHIRESS WILL: Then, if so, S. O. 131 does not apply either, or bind our hands, because that refers to a private bill also.

Mr. CHANDOS-LEIGH: S. O. 129 says, "No petitioners against any private bill, or any bill to confirm any Provisional Order," but when you get to S. O. 131, it is not "where any bill or any bill to confirm a Provisional Order."

Mr. SHIRESS WILL: S. O. 151 says, that when a bill is brought in to confirm a Provisional Order, and it is petitioned against, it shall be treated as a private bill.

Mr. BONHAM-CARTER: Then, S. O. 208A provides that "every bill for confirming Provisional Orders or Provisional Certificates shall, after the second reading, stand referred to the Committee of Selection or to the General

Committee on railway and canal bills as the case may require, and be subject to the Standing Orders regulating the proceedings upon private bills so far as they are applicable."

The CHAIRMAN: The question seems to me to be whether a company promoting a Provisional Order is in the same position as a company promoting a bill.

Mr. CHANDOS-LEIGH: S. O. 208A put Provisional Orders as far as possible on the same footing as private bills, but clearly there is this exception, that a Provisional Order does not go before the Examiner under S. O. 62. I should like to know exactly what happens under S. O. 72, when a bill to confirm a Provisional Order has been read the first time; is that bill referred to the Examiners?

Woodward (of Messrs. Wyatts, parliamentary agents): Yes; to take proofs as to deposits of plans only, under S. O. 39, which is the only Order relating to Provisional Order bills before the Examiner.

Mr. CHANDOS-LEIGH: It is clear that the Examiner takes no proofs as to a special resolution of a meeting.

Browne: Therefore I am placed in this position, if this were a bill instead of an Order I should have a clear right, because I should come under S. O. 63, and they would have to prove that there had been a meeting, at which I should have dissented, and so acquired a right to be heard under S. O. 132.

Mr. SHIRESS WILL: Can it be said that the Provisional Order sought to be confirmed here is beyond the scope of the memorandum of the articles of association of the company? Is there any district named in the articles?

Browne: No; there is none; but there is a district named in the Order.

Mr. SHIRESS WILL: This is how the matter strikes me. S. O. 131 is very plain as to the general policy of Parliament, namely, that a dissenting shareholder shall not be heard unless he has a distinct interest; the next Standing Order makes an exception in the case of a company coming under S. O. 62 and those immediately following. S. O. 62 says, where Parliament has already by an existing Act authorised and defined the limits and powers of a company, that company shall not amplify its powers by another Act without giving the shareholders a chance of being heard against it, whereas this company has not yet received parliamentary sanction, or obtained limited and defined parliamentary powers. That is the whole distinction. S. O. 63 has no application, because this company are not seeking to go beyond the powers in their memorandum of articles of association, and S. O. 64, 65,

and 66, do not affect this case. Therefore we are bound by S. O. 151 and 208A, which say that in proceedings relating to bills to confirm Provisional Orders the same Standing Orders shall apply as far as they are applicable.

Mr. CHANDOS-LEIGH: Are the promoters proposing to do any act not authorised by the memorandum of articles of association?

Browne: It cannot be said that under the words "to carry on the business of an electric lighting, electric motive power supply, and telephone company in all its branches," they can promote a Provisional Order.

The CHAIRMAN: Would not the Board of Trade have heard the petitioner on that point?

Clifford (for promoters): They did do so, and he contended that what the company was proposing to do was *ultra vires*.

Mr. CHANDOS-LEIGH: Part of the argument which struck me was that to a certain extent it is a hardship, that whereas in the case of a private bill it would be referred to the Examiner after the first reading, when the promoters would have to prove that the bill had been approved by a special resolution, there was no necessity to do that in the case of a Provisional Order, and consequently the petitioner could not place himself in the position of a dissenting shareholder.

Browne: If this is an alteration of the articles of association, I am within the S. O. 63, and, as I submit, there would be a hardship arising to the shareholder, if the company were to proceed as this company has proceeded by Provisional Order instead of by bill. You have stretched S. O. 132, so as to allow a dissenting shareholder to be heard in a case where a gentleman went to a meeting and spoke against the bill, but did not formally dissent, and you held that that was sufficient to show that he was adverse, and to give the company fair notice that there was a feeling on the part of that shareholder that they should not go on with the bill. Here the company had similar notice, because when we heard of it we protested before the Board of Trade, and said that we subscribed money for definite objects, and the company were now going to embark on an entirely different thing, and I submit that I am a dissentient shareholder according to the true intent and meaning of the Standing Orders.

Clifford (in reply): The memorandum of articles of association, in addition to what has been stated, enable us "to do all such other things as are incidental to or conducive to the attainment of the supply of the electric light within the districts of the company," and the

promoting of a Provisional Order would clearly come within those words.

Mr. CHANDOS-LEIGH: Therefore there is no change in the articles of association by the Provisional Order?

Clifford: No. The Board of Trade discourage the promotion of bills for electric lighting, and they have carefully considered the point of our keeping within our area.

Mr. SHIRESS WILL: It is obvious the company are not seeking power to go beyond the articles of association.

The CHAIRMAN: If this had been a bill instead of a Standing Order, would the petitioner have been in any better position?

Clifford: I think not. S. O. 62 would not have applied, and neither by Provisional Order nor by bill could S. O. 63 apply to this case. By S. O. 151 the same rules are applied to Provisional Orders as apply to other bills, and therefore, under S. O. 131, it is incumbent on the petitioner in this case to show that he has a distinct interest from the company, and this he has not attempted to do.

The CHAIRMAN: We need not hear you any further. The *Locus Standi* must be *Disallowed*.

Agents for Petitioner, *Roberts & Chubb*.

Agent for Bill, *Baker*.

FOLKESTONE PIER AND LIFT BILL.

Petition of RICHARD HAMMERSLEY HEENAN.

7th July, 1890.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Repeal of Enactment requiring Promoters to issue whole of Share Capital before Borrowing on Mortgage—Creditor and Holder of Lloyd's Bonds entitled to proceeds of Unissued Shares under Agreement—Postponement of Claim of Petitioner to Mortgagees—Alteration of Status.

The bill repealed a section of an existing Act whereby the promoters were prohibited from borrowing money on mortgage until the whole of their share capital had been issued and accepted. The petitioner was a holder of Lloyd's bonds and a creditor of the company, whose rights had been specially secured by an agreement entered into by the promoters with him, that the

proceeds of the sale of 700 unissued shares of £10 each should be handed to him in discharge of the debt due to him from the promoters. The bill empowered the promoters to borrow money on mortgage at once, and, inasmuch as sect. 31 of the Folkestone Pier and Lift Act, 1884, had given priority to the claims of mortgagees upon the property of the company over all other creditors, the petitioner contended that his *status* under his agreement and the Act of 1884 would be altered for the worse. The promoters contended that the bill did not prejudice the position of the petitioner, as his right to the proceeds of the remaining shares, when issued, was not touched by it; and they argued that the effect of the bill would be to make the issue of the shares, for which at present they had no applications, more probable than at the present time, owing to the improved financial position of the company, and thus to improve rather than injure the position of the petitioner:

Held, however, that his *status* was so altered by the bill as to entitle him to be heard against it.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the bill does not contain any provision by which any property of the petitioner can be taken or interfered with, or by which any rights or claims against the promoters possessed by the petitioner, whether under any contract agreement or otherwise, can be in any way prejudiced or altered; (2) the petitioner is only a simple contract creditor of the Folkestone Pier and Lift Company (hereinafter called "the company") and has no lien on the property or funds of the company, and the petition does not show that the petitioner has, nor has he in fact, any such interest in the objects and provisions of the bill as entitles him to be heard against it; (3) the petitioner is a director and shareholder of the company, and as such cannot, according to the practice of Parliament, be heard against a bill promoted under the Common Seal of the company. Moreover, the petitioner was present at a meeting of the company, held on the 21st November, 1889, when the application to Parliament for the bill and the terms of the bill were approved, and at such meeting the

petitioner moved that the application be made. If the petitioner claims to oppose the bill as a shareholder (which claim is not made in his petition) he did not, at the meeting of the company held to approve the bill in pursuance of S. O. 62 of the House of Lords dissent from the resolution of such approval; (4) the bill does not contain any clause or provision affecting the petitioner, nor is it the fact that any interest of his, even if affected thereby (which the promoters deny) is distinct from the general interests of the company; (5) the petition does not disclose any interest of the petitioner in the objects or provisions of the bill entitling him to be heard according to the practice of Parliament.

Worsley Taylor (for petitioner): The petitioner, who was the contractor for the works, and is a holder of Lloyd's bonds of the company, claims a *locus standi* as a creditor in a peculiar position, and with a peculiar security under an agreement.

The CHAIRMAN: For security does he chiefly rely on Lloyd's bonds or on the agreement?

Worsley Taylor: On the two together. He does not claim as a shareholder.

The CHAIRMAN: And you say no action he took as a shareholder could bar his right as a creditor?

Worsley Taylor: Yes. The real objection is that he is a creditor, and therefore not entitled to be heard. The position of the petitioner is this: first, that whenever the company issue the remaining share capital, they are bound, under an agreement with him, dated 20th February, 1889, to hand over the proceeds to him; secondly, until they have raised the share capital they cannot, by sect. 28 of the Folkestone Pier and Lift Act, 1884, borrow any money on mortgage. That section provides that "the company may from time to time borrow on mortgage any sum not exceeding in the whole ten thousand pounds, but no part thereof shall be borrowed until the whole capital of the forty thousand pounds is issued and accepted and one-half thereof is paid up." There remains at the present time £8,000 of the share capital not issued, and of this the petitioner is entitled, under his agreement of the 20th February, 1889, to the proceeds of the sale of 700 shares of £10 each in satisfaction of his debt now amounting to £7,000. By the bill, which repeals sect. 28 of the Act of 1884, the promoters ask to be allowed to raise money on mortgage at once, without issuing the remainder of their share capital, and the bill says that they may, not that they must, apply it towards the payment of debts, or to any purposes of the Act of 1884

to which capital is applicable. At present the petitioner's rights are protected by agreement, and he has the whole of the company's property to go against, but the bill proposes to give the promoters power to raise money on mortgage, and the general law and sect. 31 of the Act of 1884 give mortgages priority over other debts; so that the moment that is raised it will become absolutely the first charge on the company's estate, and thus over-ride the petitioner's claim against the company.

Mr. SHIRESS WILL: The strength of your case on the first blush seems to be in the agreement of the 20th February, 1889.

Worsley Taylor: I put that first, but the petitioner has a claim on other grounds. He only wants to be protected, and not to hamper the company.

The CHAIRMAN: He claims to stand as well under the Act as he does now?

Worsley Taylor: Yes; he wants these two rights preserved. Cases which in principle are in point are that of the *North Wales Narrow Gauge Railway Bill*, 1876 (1 Clifford & Rickards, 251) and the *Banbury and Cheltenham Direct Railway Bill*, 1879 (2 Clifford & Rickards, 137). We did not appear in the other House, as negotiations were then going on which have since fallen through.

Rickards (for promoters): As a shareholder the petitioner cannot be heard; as a creditor his position is this: he holds Lloyd's bonds as an acknowledgment for the amount of his debt, and they do not form in any way a mortgage debt on the property of the company. Unless, therefore, there is something in the agreement to take him out of the ordinary rule of the Court, as a contract creditor he cannot be heard. The agreement simply provides that as and when the capital is raised, the petitioner is to have the proceeds, and this is not touched by the bill. The company have had no application for the shares, and therefore have been unable to issue them. The bill does not provide for a reduction of the existing capital, so that the company can and will still issue the shares when applied for.

Mr. CHANDOS-LEIGH: Are not you at once putting £10,000 debentures in priority over any claim of the petitioner's, and supposing the company is wound up, would not the debenture holders get priority?

Rickards: When this bill is passed, and the £10,000 borrowed on mortgage, the moment the company issue any further shares the petitioner's claim will arise precisely in the same way as now.

Mr. SHIRESS WILL: Surely you will have altered his *status* by making it possible for you

to borrow the money before you issue the shares, and if you alter his *status* he is entitled to be heard.

Rickards: He must show a *prima facie* case of injury.

Mr. SHIRESS WILL: You say that at the present you have been unable to get applications for shares. Will this not be more impossible when you have put this £10,000 debentures before the shares?

Rickards: We think that the reverse will be the case on account of the improved financial position of the company. The purpose of the bill is to enable us to borrow money to pay off certain debts, and so put us in a better position, and the petitioner will have his claim against the money that is borrowed, because his debt is a charge on the capital of the company.

Mr. SHIRESS WILL: That is not what this turns on. If you are altering the petitioner's position in any respect he is entitled to be heard.

Rickards: Only if we are altering it for the worse.

Mr. SHIRESS WILL: The committee will judge as to that. The bill proposes to undo something that the former Act did—viz., make it impossible to borrow till you have raised the shares, the proceeds of which under your agreement with the petitioner must be handed over to him.

The CHAIRMAN: The *Locus Standi* of the Petitioner is *Allowed*.

Agents for Petitioner, *Lewin, Gregory and Anderson*.

Agents for Bill, *Clabon & Parker*.

GARVE AND ULLAPOOL RAILWAY BILL.

Petition of THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY.

21st April, 1891.—(Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

The bill incorporated a company with power to make a railway 33 miles in length commencing by a junction with the Highland railway at Garve, and running in a north-westerly direction to Ullapool. Clause 38 empowered the company and the Highland railway company to enter into agreements for the working, use, management and maintenance of the undertaking of the company and the supply of rolling stock by the Highland

company, and provided for arrangements between the two companies for the interchange and regulation of traffic and the fixing of tolls. Under these circumstances the petitioners contended that, although the bill was promoted by nominally independent parties, the railway authorised by it would form part of the Highland railway system, and they asked to be heard to obtain the extension of certain provisions of the Great North of Scotland Railway Act, 1884, to the proposed railways. Sect. 35 of that Act had provided that "each of the two companies" (i.e., the Highland and Great North of Scotland railway companies), "shall from time to time afford to the other of them all proper and sufficient facilities for the reception, accommodation, forwarding, interchange and delivery of traffic of every description passing or intended or directed to pass between any points on or beyond the railway of the company, and any point on or beyond the railway of the Highland railway company," and such facilities were to include through tolls and booking a reasonable supply of through carriages, and conveniently timed and arranged trains. In support of the principle upon which the petitioners contended that they should be heard to obtain the extension of the above section, and another section of the same Act dealing with traffic facilities, to the railway proposed by the bill, they referred to the decisions of the Court in the *Alloa Railway Bill*, 1879, on petition (2), (2 Clifford and Rickards, 134); the *Alloa, Dumfermline and Kirkcaldy Railway Bill*, 1883 (3 Clifford and Rickards, 247), and the *Strathspey, Strathdon and Deeside Junction Railway Bill*, 1884 (*ib.* 469). The promoters replied that if the proposed railway were part of the Highland railway system, sect. 35 of the Great North of Scotland Railway Act, 1884, would, without any further enactment, apply to it, and that if it were really an independent railway, the petitioners had no right to claim that they should so apply. The Court *Disallowed* the *Locus Standi* of the Petitioners.

The arguments turned upon the construction of sect. 35 of the Act of 1884, and the case was of no value as a precedent.

Cripps, Q.C., appeared for the Petitioners; *Pember*, Q.C., for the Bill.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Martin & Leslie.*

GLASGOW CORPORATION BILL.

Petition of THE PARTICK, HILLHEAD AND MARYHILL GAS COMPANY LIMITED.

1st May, 1890.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Sir GEORGE RUSSELL, M.P.; Mr. HEALY, M.P.; Mr. COMPTON, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Corporation Promoting Bills for Supply of Electricity and Extension of Burgh Simultaneously—Promotion of Bill by Petitioners to Supply Electricity within Added Area—Competition resulting from both Bills of Corporation—Claim to be heard against both Bills—Locus Conceded against Bill for Extension of Burgh.

Part III. of the bill empowered the corporation of Glasgow to supply electricity within "the whole of the City and Royal Burgh of Glasgow." The corporation were at the same time promoting a bill in Parliament for the extension of their burgh boundaries. The petitioners were a gas company, without statutory powers, supplying gas to a district adjacent to the burgh, and were themselves promoting a bill to confer statutory powers upon them, and to empower them to supply electricity to the district at present supplied by them with gas. The bill of the corporation for the extension of their burgh included this district within the burgh, and the petitioners pointed out that, inasmuch as the extension bill contained the usual clauses extending all the powers of the corporation to the added area, the effect of the two bills together would be to enable the corporation to compete with them for the supply of electricity to the same district. They urged that the two bills of the corporation, so far as the supply of electricity within the burgh was concerned, must be regarded as one, and that in accordance with the principle of the decision in the *Hull and North-West Junction Railway Bill*, 1887 (Rickards & Michael, 160), they were entitled to be heard against both bills. The promoters contended that the injury apprehended by the petitioners would arise under the extension bill, against

which they conceded them a *locus standi*, and not under the present bill, which only dealt with the burgh as it at present existed, within which the petitioners had not and were not seeking for powers to supply electricity. It was stated, in the course of the argument, that the Committee of the House of Lords, which was then considering the bill for the extension of the burgh boundaries, while willing to hear them on clauses, had declined to hear the petitioners against the preamble of that bill, and the Court, in order that the case of the petitioners might be fully heard, allowed their *locus standi* against Part III. (Electricity) of the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petitioners do not allege in their petition, nor is it the fact that any lands or other property belonging to them, or in which they are interested, will be taken or interfered with under the powers of the corporation bill; (2) the rights and interests of the petitioners are not proposed to be interfered with under the powers of the bill; (3) the petitioners are a limited company without statutory powers, who supply gas within an area outside the area within which the promoters seek powers to supply electricity, and the passing of Part III. of the corporation bill cannot in any way affect them, and this is indeed admitted by paragraph 2 of the petition; (4) the petition is really a petition against the *Glasgow Boundaries Bill* now depending in the House of Lords, and promoted by the promoters of the corporation bill, and the petition relates solely to the effect which the *Glasgow Boundaries Bill*, if passed, might have on the powers sought by Part III. of the corporation bill. The petitioners have presented a petition against the *Glasgow Boundaries Bill*; (5) it is stated that the petitioners are an incorporated company, but this is ambiguous as they are only incorporated under the Companies Acts, 1862 to 1886, and are not incorporated by Parliament, and although the petitioners supply gas they are doing so at their own risk, having no statutory powers, nor have they any specific area of supply as alleged in the petition; (6) the allegations in clauses 4 to 19 inclusive have nothing whatever to do with the corporation bill, being matter relating to the *Glasgow Boundaries Bill*, and, it is submitted, do not entitle the petitioners to be heard against the corporation bill; (7) the petition does not

contain any allegation on which, according to the practice of Parliament, the petitioners are entitled to be heard either against the preamble or the clauses of the corporation bill.

Richards (for petitioners): Part III. of the bill empowers the corporation of Glasgow, who at present supply gas in certain districts, to supply electricity within the burgh. The petitioners are a gas company without statutory powers, and have been in existence since 1872, and they too have a bill before Parliament to enable them to supply electricity as well as gas, and to give them statutory powers. Clause 22 of the bill defines the area within which the Glasgow corporation may supply electricity as "the whole of the City and Royal Burgh of Glasgow," and by the *Glasgow Boundaries Bill* now before a Committee of the House of Lords, Partick, Maryhill and Hillhead are included within the burgh, and against that bill we have petitioned. As is usual in such cases, that bill extends the powers of the corporation to the extended burgh. It is true that one bill would not hurt us without the other, that is to say, if this electricity bill were withdrawn, we, as competitors with the Glasgow corporation for the supply of gas and electricity, would not be injured as competitors by the extension of the burgh *per se*; and if this bill were passed, but there was no extension of the burgh, the Glasgow corporation would not be able to supply electricity within the area which we propose to supply by our bill. Before the Boundaries Committee we could only deal with our rights as a company supplying gas, and could not go into the question of competition. If these electric lighting powers are conferred by this bill upon the corporation of Glasgow, and in addition, by the other bill, they get the added area, which is our area of supply, the corporation of Glasgow would compete with us for the supply of electricity within Partick, Hillhead and Maryhill.

Sir GEORGE RUSSELL: Your case is that the two bills constitute together a whole scheme, and you cannot put your case fairly before Parliament unless you are heard upon both bills.

Richards: Yes. The *Glasgow Boundaries Bill* has nothing whatever to do with gas or electricity, except incidentally. It is a bill for the extension of the burgh, but if it is passed, this bill, in conjunction with it, would enable the Corporation of Glasgow to supply electricity within their extended boundaries, comprising our district, and we ought to be heard against both bills as a gas company, and a company which has now a bill before Parliament for

supplying electricity in the districts proposed to be annexed by the corporation of Glasgow in the *Boundaries Bill*.

Mr. SHIRESS WILL: Does the bill now before us authorise the supply of electricity by the corporation within the district you are seeking by your bill to supply with electricity?

Rickards: Not by itself, but when read with the *Boundaries Bill* it will do so. If the two powers were contained in different parts of the same bill, we should be entitled to be heard against both parts. I cite the case of the *Hull and North-West Junction Railway Bill*, 1887 (Rickards & Michael, 160), as establishing the principle for which I am contending.

Mr. SHIRESS WILL: There the question was whether, when one purpose was about to be affected, the promoters could avoid the *locus standi* of a petition by splitting up that purpose into two bills: that was a different case from this.

Rickards: The petition of the corporation against our own bill for supplying electricity, treats the *Boundaries Bill* and this bill as one, and admits that if the two are passed, by their joint operation they, the corporation, will become competitors with us for the supply of electricity within our area of supply. Not only are we both promoting bills, but we are both also promoting Provisional Orders in the alternative for the supply of electricity, and the corporation make the same admission in their objections to our Order.

The CHAIRMAN: The question is this, the joint effect of the two bills being to bring about a competition between the corporation and the petitioners, is it sufficient that the latter should be heard against one bill, or ought they to be heard against both the bills?

Erskine Pollock (for promoters): The petitioners ask for a *locus standi* against Part III. of this bill, being that part which deals with electricity within the burgh of Glasgow, and against that they can have nothing to say, for they are not in the burgh as dealt with by this bill, and have nothing to do with it; but if another bill, the *Boundaries Bill* is passed, the burgh will include a district in which they are interested, against the inclusion of which they undoubtedly would have something to say; that bill does not extend the present gas powers of the corporation, but would extend the powers obtained for electric lighting under this bill.

Mr. HEALY: Does either bill by itself extend the electric lighting powers to Partick, Hillhead and Maryhill?

Pollock: Either the *Boundaries Bill* or nothing.

Mr. SHIRESS WILL: If the electric lighting powers are extended over Partick, Hillhead and Maryhill, would it be by the operation of that clause in the *Boundaries Bill* which extends the limits of the burgh of Glasgow, and by the operation of no other clause?

Pollock: Yes.

Mr. HEALY: Suppose the *Boundaries Bill* passed, by itself it will not confer any powers of supplying electricity in this area?

Pollock: No.

Mr. HEALY: Then what right of *locus standi* would the petitioners have against the *Boundaries Bill* on the question of electricity?

Pollock: They have raised this point in their petition, and we have admitted their *locus standi*.

The CHAIRMAN: If they do not get a *locus standi* on this bill, the question arises whether they will be allowed to raise the question before a Committee.

Rickards: The Committee on the *Boundaries Bill* has stopped us from being heard on preamble, on the grounds that our case would not affect their decision on the preamble, and they have said we must wait till clauses.

The CHAIRMAN: That is a material fact; if you had been stopped from going into gas and electricity on clauses also, it would have been most material. The real point to my mind is this: Is it certain that the petitioners will have a full chance of being heard before that Committee on the electricity question?

Pollock: The petitioners will bring up a clause before the Committee on the *Boundaries Bill* to provide that, if we extend the area of the burgh to certain limits, we shall not be allowed to supply electricity within their area.

Mr. HEALY: You say they are not entitled to be heard against this bill, because what they have to complain of arises on another bill. Could not the Committee on the *Boundaries Bill* equally say that they have no right to be heard, because their right to be heard in respect of electricity depends on the passing of another bill? Can we assume that the Committee on the *Boundaries Bill* will really go into this electricity question on clauses?

Pollock: It seems to me, according to the decision the Committee have given, they are bound to do so, and we will give an undertaking that if they raise this question of electricity in that bill, supposing they are shut out here, we will not object to their raising it there.

Mr. SHIRESS WILL: We must decide on the rights of the parties, not on an undertaking.

Pollock: I submit that the petitioners should be heard against the bill that injures them, and not against the bill that does not.

The CHAIRMAN: The *Locus Standi* is Allowed against Part III. of the Bill.

Agents for Petitioners, *Lock & Goodhart*.

Agents for Bill, *Martin & Leslie*.

GREAT NORTH OF SCOTLAND RAILWAY BILL.

Petition of (1) OWNERS, &c., IN THE VICINITY OF ELGIN; AND (2) JAMES SIMPSON.

21st April, 1890.—(Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

The objections to the *locus standi* of all the petitioners (1) and (2), with the exception of that of Robert Walker, who signed the petition (1) of owners, having been withdrawn, they were, with the above-named exception, admitted to be heard against the bill.

Agents for the Petitioners (1) and (2), *Martin and Leslie*.

Petition of (3) THE CORPORATION OF INVERNESS.

Construction of Railway to compete with existing Railway — Claim of Municipal Corporation to be heard on account of Injury to Trade Interests — S. O. 134 [Municipal Authorities and Inhabitants of Towns]— Sufficiency of Allegations of Petition—Practice.

The bill empowered the promoters to construct a railway, running almost parallel with that of the Highland railway company from Elgin to Inverness, which would afford the promoters an independent access to the latter, in competition with the Highland railway, by means of running powers over which they at present carried traffic to Inverness. The promoters took powers to cross a road under the control of the petitioners, and in respect to this conceded them a limited *locus standi*, but the petitioners claimed a general *locus standi* against the bill under S. O. 134, on the ground that the construction of a second railway would injure the trade of Inverness by an unnecessary expenditure

of capital and by injuring the Highland railway company, who had works at Inverness, and on whose prosperity that of the burgh largely depended. The promoters objected that the allegations* of the petition as to public injury were insufficient, and that there was nothing which the corporation could urge which could not be raised upon the petition of the Highland railway whose *locus standi* was conceded:

Held, that the allegations of the petition were sufficient, and that, although the case was not a strong one, the petitioners were entitled to a general *locus standi* under S. O. 134.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the promoters do not object to the right of the petitioners to be heard with respect to the alleged interference with the Longman-road mentioned in paragraph 5 of the petition, but, as regards the other matters referred to in the petition, the promoters submit that the petitioners do not allege on the face of the petition, nor is it the fact, that they are the municipal or other authority having the local management of a town injuriously affected by the bill; (2) the petition does not allege, nor is it the fact, that the petitioners have any such interest in the subject-matter of the bill (except as aforesaid) as would entitle them, according to the practice of Parliament, to be heard on their petition against the said bill, nor are they or the town of Inverness injuriously affected by the bill.

Pope, Q.C. (for petitioners): The bill empowers the promoters to construct a railway which will give them independent access to Inverness instead of running over the Highland company as they now do. The promoters cross a road by means of a bridge, and in regard to this road the promoters concede the right of the petitioners to be heard. The question is whether our *locus standi* should be general or limited. The petitioners allege that the construction of a new line would impoverish both companies, and therefore render the public service less adequate than now, and also that the Highland company, having their workshops at Inverness, conduce largely to the prosperity of the town, and that

* As to the form of the allegations in the petition, upon which the petitioners relied, see *infra* (argument of Pope, Q.C.)

anything affecting their interests must prejudicially affect the interests represented by the petitioners. The effect upon the public trade of Inverness of the expenditure contemplated by the promoters should be discussed, not merely by a competitive railway company, but by an impartial body such as the corporation itself, and therefore they are here to represent impartially the trade interest of the burgh itself, and ask to be allowed to raise the question whether it is desirable that the present arrangement should be interfered with, not in the interest of the Highland company, but as a matter of general interest to the trade of Inverness. In paragraph 4 of our petition we say: "The proposed line runs parallel with the existing line of the Highland railway company for the whole distance from Elgin to Inverness, and is, in the opinion of your petitioners, entirely unnecessary in the public interest. The population of the district is comparatively small, and there is no commerce of an extent adequate to support two lines. The result of constructing a new line would be that both companies would be impoverished, and would be unable to afford adequate service to the public." Then in paragraph 6 we say: "The Highland railway company have been for many years established at Inverness, where their workshops are situate, conducing largely to the prosperity of the burgh. The prosperity of the town is to a large extent due to the Highland company, and anything affecting the interests of the latter must prejudice the interests which your petitioners represent." The petition is called "The humble petition of the Provost, Magistrates, and Town Council of the Royal Burgh of Inverness," and is sealed with the seal of the corporation. The only question is whether that allegation is sufficient. It was intended to say that the bill would injure the trade of the burgh; if it would do so, then we should have a *locus standi* under S. O. 134 if you thought fit.

The CHAIRMAN: I think with your paragraph 6 you could read the words of paragraph 4.

Pope: Yes; the two should be read together; the one is statement, the other argumentative. What we are anxious is that the question should be discussed not merely by a competitive company, but by the public authority, whose only object is to maintain the railway service in the highest state of efficiency.

The CHAIRMAN: You say "We have a good service by the single line, and it would not do us any good to have another line. On the contrary we are prepared to show that real damage would result to the existing line by the introduction of another line, which the intro-

duction of the other line would not compensate for."

Pope: By reason of unnecessary expenditure of capital larger than the trade of the burgh can afford to support, and therefore it is to the public interest that the trade of the town should be conducted by one line of railway.

Cripps, Q.C. (for promoters): The petitioners do not raise any question of the general trade of Inverness, but the question that must arise between the Highland company and the promoters.

The CHAIRMAN: They say the result of constructing a new line would be that both companies would be impoverished, and that would injure the public.

Cripps: A possibility of that kind is too remote; it is a mere general allegation as to the position of the two lines. It is not suggested in either paragraphs 4 or 6 that any injury would be done to Inverness, except through the Highland company, and but for S. O. 134 they would only have a limited *locus standi* against interference with a road under their control. There has never been a case where the fundamental allegation being injury to a competing railway company, the local authority has been given a *locus standi* under S. O. 134; and as to the injury to the competing railway company, that will be fought out between the two companies. The petitioners must show on the face of the petition some reasonable ground of injury apart from the relations between themselves and the Highland company. A *locus standi* under S. O. 134 is not given in order that independent people may appear before Committees and give information; it is not enough to allege that you may be injured through third parties.

The CHAIRMAN: It is not a very strong case, but we allow a general *Locus Standi*.

Agents for Petitioners, *Martin & Leslie*.

Agents for Bill, *Dyson & Co.*

HIGHLAND RAILWAY (NEW LINES) BILL.

Petition of WILLIAM YOUNG.

21st April, 1890.—(The Court was similarly constituted as in the preceding case (*Great North of Scotland Railway Bill*)).

Cripps, Q.C., appeared for the trustees of the petitioner, now deceased, and stated that the petition had been withdrawn by consent.

Agents for Petitioner, *Dyson & Co.*

Agents for Bill, *Martin & Leslie*.

LANARKSHIRE AND DUMBARTON- SHIRE RAILWAY BILL.

Petition of the WEST HIGHLAND RAILWAY
COMPANY.

21st April, 1890.—(*The Court was similarly constituted as in the two preceding cases, q.v.*)

The bill authorised the construction of a railway, twenty-three miles in length, commencing in Maryhill, Glasgow, by a junction with the Hamilton Hill branch of the Caledonian railway, and terminating on the shore of Loch Lomond, where power was given to the promoters to construct a pier one hundred and thirty feet in length. The bill also contained provisions for enabling the Caledonian railway company to subscribe or guarantee a dividend on the capital, and to work the proposed railway. The petitioners, whose line was worked under agreement by the North British railway company, with whose railways it formed a continuous route from Glasgow and the south of Scotland to the Western Highlands, claimed to be heard against the bill on the ground of competition. The promoters contended that the company, with whom the bill would enable them to compete, was the North British company, and that the petitioners, if entitled to be heard at all, should have presented a joint petition with that company, and were not entitled to be heard in their own right. The Court however *Allowed the Locus Standi* of the Petitioners on the ground of competition.

[The case was one of ordinary railway competition, depending on its own special circumstances and locality, and established no new principle, and was of no value as a precedent.]

Bidder, Q.C., appeared for the Petitioners; *Saunders*, Q.C., for the Bill.

Agents for Petitioners, *Durnford & Co.*

Agents for Bill, *Martin & Leslie.*

LONDON AND SOUTH-WESTERN RAILWAY BILL.

Petition of THE POOLE BRIDGE COMPANY.

13th March, 1890.—(*Before Mr. PARKER, M.P., Chairman; Mr. HEALY, M.P.; Mr. COMPTON, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Construction of Railway to give Direct Access to Town—Owners of Toll Bridge—Diversion of Traffic—Competition, Improvement of Existing—Remoteness of Injury.

The bill, *inter alia*, empowered the promoters to construct a railway which would give them direct access into the town of Poole from Hamworthy junction, which was a short distance outside the town. The petitioners were the owners of a toll bridge, who derived at the present time a considerable revenue from traffic which came by road over their bridge from Hamworthy to Poole, in preference to going by a circuitous existing route by railway. They complained that if the railway were made the traffic which now crossed their bridge would come direct by railway into Poole. The promoters denied that their railway would accommodate the same traffic that was served by the petitioners' bridge, which traffic was of a local character, and argued that, inasmuch as the railway would be a mile and a-quarter from the bridge, the injury complained of was too remote to entitle the petitioners to be heard, and that at any rate the effect of the bill would only be to improve existing competition :

Held, that under the circumstances the *locus standi* must be disallowed.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege or show nor is it the fact that the bill contains provisions for taking or using any part of the lands, works or accommodations of the petitioners; (2) the petition does not show nor is it the fact that any such competition between the petitioners and the promoters would be caused by or result from the bill if passed, or by or from the

works to be thereby authorised, as according to the practice of Parliament entitles the petitioners to be heard against the bill; (3) the loss or injury which the petitioners allege or suggest that they would sustain by reason of the construction of the proposed railway referred to in paragraph 2 of the petition, is altogether illusory, and if any such loss or injury should result to the petitioners it would be too remote to entitle the petitioners to be heard against the bill; (4) the bill does not contain any provision affecting the petitioners; (5) the petition does not show that the petitioners have, nor have they in fact any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Clabon, parliamentary agent (for petitioners): The bill, amongst other works, empowers the promoters to construct a railway one and a-half miles in length, to connect the promoters' Southampton and Dorchester branch at Hamworthy junction with the Poole and Bournemouth branch, and so enable persons to go from Hamworthy junction direct to Poole station by railway. We allege in our petition, paragraph 3, "The petitioners are a company incorporated by Act of Parliament, 4 William IV., c. 46, for the purpose of building a bridge over the water between the town of Poole and the village of Hamworthy, in the county of Dorset; (4) in pursuance of the Act your petitioners erected a bridge at a cost of £10,000, which has been open to the public for 50 years and upwards; (5) by sect. 66 of their said Act your petitioners were authorised to levy certain tolls and charges, and they now derive a large revenue in respect thereof; (6) the railway station at Hamworthy is about half a mile from the centre of the town of Poole, and all persons coming to the said station on their way to Poole pass over your petitioners' bridge. A very considerable portion of the traffic over the said bridge is derived from this source; (7) Hamworthy station is situate on a spur line which joins the Southampton and Dorchester branch of the company's railway at Hamworthy junction; (8) by far the most direct and quickest route to Poole from Hamworthy junction (at which persons coming from all other stations on the said branch can change) is to go by train to Hamworthy station, and then to walk or drive across the bridge of your petitioners into Poole. In order to get direct from Hamworthy junction to Poole station by railway it is necessary to go from Hamworthy junction to Broadstone and New Poole junction, a distance of some three miles, and then to change carriages and go back

again to Poole station." Then in paragraph 9 we allege that the proposed railway will compete with our bridge for traffic from Hamworthy junction to Poole, and in paragraph 10 we say: "In your petitioners' private Act are clauses by which they were bound to compensate persons having a right of ferry across the said water from any loss of traffic arising from the construction of their said bridge. Your petitioners have paid considerable sums to such persons. In case the bill shall be passed and the proposed railway hereinbefore described authorised by Parliament, your petitioners will suffer much loss by reduction of tolls, and ought to be properly compensated as owners of the said bridge for any loss of traffic occasioned by the making of the said railway." Mr. Percy, the chairman and manager of the bridge company, and practically the owner of the bridge, is prepared to show that he derives an income of £600 per annum from the bridge.

Pember, Q.C. (for promoters): I accept the statement that the receipts from the tolls are £600 a year.

The CHAIRMAN (to *Clabon*): Your argument is that, if the bridge had to compensate the owner of the ferry, then the railway should compensate the bridge. Can you refer to any precedent for a *locus standi* being given in respect of competition between a toll-bridge and a railway?

Clabon: Yes; in the *Tower Bridge Bill* the City of London gave a compensation clause to the Tower Subway company as their tolls would be affected. All we ask for is to bring up clauses to compensate the bridge company. Competition between a bridge and a railway is the same as competition between a canal and a railway. (*Stourbridge Western Railway Bill*, 1885, Rickards & Michael, 72.)

Mr. CHANDOS-LEIGH: Would a ferry have a *locus standi* against a railway company who proposed to carry a bridge over the site of the ferry?

Clabon: Yes; in the case of the Tower subway they had to compensate the old Thames watermen; also in the case of the Blackwall tunnel the owner of the ferry had to be compensated.

Mr. CHANDOS-LEIGH: This bridge was constructed by virtue of an Act of Parliament under which there was a right to take tolls; it is not like the case of an omnibus.

Clabon: This very railway company gave compensation to a bridge at Netley.

Pember (in reply): I admit there are many cases in which ferries have been given a *locus standi*; but a ferry is a franchise, and has limits defined by law within which a nuisance

would be created if anything of the nature of a new means of transit from point to point was established. The present is not such a case, and is unlike the case of the Tower subway, where a subway was going to be made under the site of the ferry. The proposed line is a mile and a-quarter from the toll-bridge, and the object of the line is quite distinct from the object of the bridge, which is merely to carry the road across the little neck of Poole harbour. The object of our existing line is not to take people from Hamworthy to Poole, but for the purposes of through traffic to improve our route upon Weymouth.

The CHAIRMAN: The object of the bill may be to improve the railway communication, but incidentally it may inflict great injury upon this bridge.

Pember: The two points to be considered are, first, whether the kind of competition is one in respect of which in your discretion you would give a *locus standi*, and, secondly, whether the competition is not a great deal too remote. To take the remoteness first, is it likely that people who wanted to cross from Hamworthy to Poole would go by train instead of crossing over the bridge?

The CHAIRMAN: It would not be so much the local traffic, but traffic coming from the West of England. It comes to Hamworthy junction, from thence does not it go across the bridge?

Pember: No; through traffic goes by railway into Poole, not by the bridge.

Mr. CHANDOS-LEIGH: Would not sheep or cattle from the west country destined for Poole come over the bridge?

Clabon: Yes.

Pember: If they do, they would do the same in future. The bridge is exactly analagous to a highway with a toll bar on it, and the owners of a turnpike road have never had a *locus standi* given them against a railway. The Stour-bridge case is not in point, for there a railway was going to be authorised to do what had hitherto been done by canal.

Mr. HEALY: If this had been a rival toll-bridge then I apprehend there would have been no question?

Pember: Not if it was proposed to be constructed within a certain distance of the existing bridge.

The CHAIRMAN: There is a case where perhaps we went rather far in giving a *locus standi*—the case of the *Swindon, Marlborough, &c., Railway Bill*, 1883, on the *petition of the Corporation of Southampton* (3 Clifford & Rickards, 354).

Pember: There the object of the new pier at Stonepoint was the same as that of the harbour,

in which the Southampton corporation were interested.

Mr. CHANDOS-LEIGH: Suppose this bridge had never been built, and the old ferry still existed, then do you admit that the ferry owner would have any right to be heard against this proposal?

Pember: Certainly not, because he is a great deal too far off.

Mr. CHANDOS-LEIGH: Then it becomes a question of remoteness.

Pember: If the geographical limits of the franchise were described, it would be simply a question of measurement; but if the limits were not named, then at common law it would have been held to be too far away.

The CHAIRMAN: I do not think we have to look to the common law right in this case, but to the degree of diversion of the traffic; here you have certain traffic which would probably continue to go over the bridge, but it seems to me that there is other traffic, say cattle and sheep traffic from the west, which now goes over the bridge, and which would most likely go by the new line in future. Do not cattle coming from Dorchester and destined for Poole now get out at Hamworthy junction and go over this bridge?

Pember: No; the natural way for them to go to Poole would be for them to stop in the trucks and go round by Broadstone junction.

The CHAIRMAN: They could be delivered close to the bridge.

Clabon: I am instructed that they do go over the bridge now.

The CHAIRMAN: Do not cattle coming now from the west, arriving in trucks at Hamworthy junction, instead of going north and then coming south to Poole, go down this branch line to Hamworthy itself and then walk across the bridge?

Pember: No; it is most unlikely that cattle bound for Poole, or beyond, would be taken in trucks to Hamworthy junction, then taken by a separate engine to Hamworthy station, then walked to Hamworthy, and then over a toll-bridge to Poole; it would cost no more to take them round undisturbed in the trucks than to take them across the bridge.

Mr. CHANDOS-LEIGH: You do not admit that the bridge would have a *locus standi* even if a considerable traffic came that way, but you take your ground on the analogy of a turnpike trust.

Pember: Yes; there is no magic in this being a bridge. A ferry is a peculiar thing, because of the common law rights of ferry-owners, but ferry-owners have not always been heard, as in the case of the *Dublin, Wicklow and Wexford*

Railway Bill, 1878 (2 Clifford & Rickards, 89). This bill will at most improve an existing competition, because we can now send traffic between Hamworthy and Poole, although by a circuitous route. (*Mersey Railway Bill, 1886, Rickards & Michael, 118.*)

The CHAIRMAN: Does cattle traffic from Weymouth go round by the existing line now?

Pember: The solicitor to the railway company says that it does.

Clabon: The toll-takers on the bridge are here, and deny that.

Pember: They can speak to traffic coming over the bridge, but cannot prove that cattle traffic does not go by railway from Hamworthy to Poole now.

The CHAIRMAN: The *Locus Standi* of the Petitioners is *Disallowed*.

Agents for Petitioners, Clabon & Parker.

Agents for Bill, Rees & Frere.

LONDON, BRIGHTON AND SOUTH-COAST RAILWAY (VARIOUS POWERS) BILL. [H.L.]

Petition of WILLIAM DUKE AND OTHERS.

16th June, 1890.—(*Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Practice—Agreed Clause in House of Lords—Petition of Same Class of Petitioners, but Bearing Additional Signatures—Identical Interests—Same Grounds of Complaint.

The petitioners, who were 40 in number, objected to clause 15 of the bill, which authorised the promoters to close up a footpath which crossed their railway on the level, and to substitute a foot-bridge for it. The petitioners, who were residents on a building estate adjacent to the railway at this point, alleged special injury to their property by the closing of the footpath. The special injury was denied, but the main ground of objection to the *locus standi* of the petitioners was that a petition, couched in identical terms, had been presented against the bill in the House of Lords, and counsel for the petitioners had agreed to certain modifica-

tions of clause 15 as there introduced, which resulted in the form in which it now stood in the bill. The petition as introduced into the House of Lords was signed by 100 petitioners, out of a total number of 135 residents on the building estate in question, and of those petitioners 18 had signed the present petition. Under these circumstances counsel for the promoters contended that the interests represented by the two petitions were the same, and that in effect the case of the petitioners had been dealt with in the House of Lords, and an agreement come to, which it was not competent for them to re-open in the second House:

Held, that the petitioners were not entitled to be heard.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the statements in the petition are erroneous. Clause 9 of the bill refers to tolls on the West London railway, and not to any footpath; the statement of paragraph 3 of the petition, which appears to imply that a right of carriage roadway in the parish of Rumbolds Wyke is to be closed, is incorrect. There is nothing in any part of the bill to interfere with it; (3) the only object of the bill in relation to this parish is to provide that so long as the company maintain a foot-bridge in the parish of Rumbolds Wyke at a certain point mentioned in clause 15, rights of footway over the railway on the level at the same point shall cease; (4) the petitioners are not the local authority having control of the footpaths in the parish of Rumbolds Wyke, nor have they any such interest in the matter as entitles them to be heard. But in fact they were allowed to be heard before the Committee of the House of Lords, to whom the bill was referred. The promoters of the bill offered to modify this clause, and it was modified in accordance with an arrangement made with the counsel for the petitioners, and the modified clause is now clause 15 of the bill; (5) the petition does not disclose any ground on which according to the practice of Parliament the petitioners are entitled to be heard on their petition against the said bill.

Batten (for petitioners): The petitioners are owners and occupiers of a building estate between Chichester and Brighton. Both the passenger and carriage traffic has to pass over a level crossing which was authorised when the London, Brighton and South Coast railway

was authorised from Chichester to Brighton. By clause 15 of the bill, power is sought to stop up so much of the footpath in the parish of Rumbolds Wyke leading from Chichester to Rumbolds Wyke as crosses on the level the Brighton and Portsmouth railway of the company, and the bill also provides that "when and so soon as the company shall have constructed and completed a footbridge across their railway in substitution for the said portion of footpath, all rights of way over such portion of footpath or roadway so far as within the boundaries of the company's property shall cease and be extinguished."

Saunders, Q.C. (for promoters): The clause does not say "or roadway" in dealing with this particular level crossing. These petitioners appeared in the House of Lords, and by agreement between us the clause was modified as regards this level crossing by the omission of the words "or roadway," and the clause, as modified, was agreed to by their counsel. They cannot after that be heard to re-discuss an agreed clause. The two petitions are identical in language.

Batten: There are 40 signatures to the petition, and of them 22 did not sign the petition to the House of Lords.

Saunders: In the House of Lords there were 100 out of a total of 135 residents on this estate petitioning. Those 100 petitioners must be taken to represent the residents generally, and they have agreed to clause 15 as it now stands.

The CHAIRMAN: The petitioners must first show some ground why they ought to be heard in the absence of the road authority; secondly, assuming they show some such ground, there is the further point whether what passed in the other House has not disposed of their petition, because it may be said that merely adding twenty-two names does not give any weight to a petition framed upon the same terms as the petition to the House of Lords, and with substantially the same signatures, or enable them to open up a matter that was settled by arrangement.

Batten: On the first point I cite the case of the *Wrexham, Mold and Connahs Quay Railway Bill*, 1888 (Rickards & Michael, 234), in which an adjoining owner was allowed a *locus standi* because he was specially affected, though the vicar, churchwardens, overseers, and waywardens of the town were not allowed to be heard. I also refer to the case of the *London and South-Western Railway Bill*, 1883 (3 Clifford and Rickards, 313).

Saunders (in reply): As a matter of fact the petitioners will be benefitted as regards the

footway by the construction of a footbridge, and they will be in exactly the same position with regard to the carriage way, which we do not take power to stop up, as they are at present. But under any circumstances I claim that they cannot be heard after their agreement to the clause as it now stands in the House of Lords.

The CHAIRMAN: The *Locus Standi* of the Petitioner is *Disallowed*.

Agents for Petitioners, *Batten, Proffit and Scott*.

Agents for Bill, *Dyson & Co.*

METROPOLITAN RAILWAY BILL.

Petition of (1) THE VESTRY OF MARYLEBONE; AND (2) THE VESTRY OF ST. PANCRAS.

14th March, 1890.—(Before Mr. PARKER, M.P., Chairman; Mr. COMPTON, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Underground Railway—Power to Rebuild and Underpin—Vestries as Road Authorities—Surface of Street not Interfered with—Repeal of Act Prohibiting Goods Traffic—Local Authority of District Injurious Affected—S. O. 134 (Municipal Authorities and Inhabitants of Towns).

Clause 25 of the bill provided that the Metropolitan railway company might "from time to time strengthen and improve their railway and . . . underpin and rebuild in such manner and of such materials as may be found expedient the side walls and foundations thereof, and . . . extend and enlarge their stations, platforms, sidings, works, and conveniences, and . . . make inverts under their railway, and for that purpose . . . excavate the soil under the railway." The petitioners (1) and (2) were vestries, in whom the roads under which the railway ran were vested, with power to lay sewers under them. They contended that the clause in question in effect authorised the re-construction of the railway, and that although the bill did not empower the promoters to interfere with the surface of the road, the effect of the works might be

to cause a subsidence of the roads, and that they ought, as the road authorities, to be heard to obtain clauses for the protection of the public interests, as they had been against the original bill for the construction of the railway. The promoters contended that the bill only gave them powers over their own property, and that if in the execution of the works they injured the roads, the petitioners would have a legal remedy against them, although this was questioned by the petitioners :

Held, that as a public body who were the guardians of public interests in the roads, both petitioners were entitled to be heard against clause 25 of the bill.

Clause 36 of the bill repealed certain sections of an Act obtained by the company in 1873, which had placed certain restrictions on the carrying of heavy goods traffic over their railway. The vestry of the parish of St. Marylebone claimed to be heard against clause 36, under S. O. 134, as representing the inhabitants of their district, which, they alleged, would be injuriously affected by the repeal. The petitioners had been heard without objection to their *locus standi* against two bills previously promoted by the company to get rid of restrictions upon goods traffic, and they claimed to have been instrumental in obtaining the restrictions now sought to be removed :

Held, that they were entitled to be heard against the clause in question.

The *locus standi* of (1) the vestry of the parish of St. Marylebone was objected to on the following grounds: (1) the promoters deny that the petitioners or the district under their control, or the inhabitants thereof, are injuriously affected by the bill within the meaning of S. O. 134, so as to entitle them to be heard against the bill ; (2) it is not alleged in the petition, nor is it the fact that any lands or property of the petitioners will be taken under the powers of the bill ; (3) the promoters deny that clause 25 of the bill will have the effect stated in the petition, or will empower the promoters to execute works or carry on operations which would injure any streets or sewers, or cause any inconvenience to the inhabitants

of the parish of St. Marylebone ; (4) the petitioners have not in their own right, or as representing the inhabitants of the whole or any part of the parish, any such interest in sects. 26 and 27 of the Metropolitan and St. John's Wood Railway Act, 1873, as to entitle them to be heard against the repeal of those sections proposed by clause 36 of the bill, and referred to in paragraph 5 of the petition ; (5) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard thereon against the bill.

The *locus standi* of (2) the vestry of St. Pancras against clause 25 was objected to on the following grounds : (1) it is not alleged in paragraphs 8 and 9 of the petition (which are the only parts of the petition relating to the said clause), nor is it the fact that the petitioners or their property, rights and interests, or the said parish or the inhabitants thereof, are injuriously or in any way affected by the said clause ; (2) it is not alleged in the petition, nor is it the fact that clause 25 of the bill authorises any works affecting, or in any way affects, the streets, sewers, drains, or property of the petitioners ; (3) it is not alleged in the petition, nor is it the fact that any lands of the petitioners may or can be taken under the powers of the bill ; (4) the petition discloses no grounds entitling the petitioners to be heard thereon against clause 25 of the bill.

Saunders, Q.C. (for (1) vestry of Marylebone) : We claim to be heard against clauses 25 and 36. I will take first clause 25, which is the underpinning clause, and is as much a clause for new construction as if they had deposited fresh plans showing fresh works, in which case the vestry would have been entitled to be heard against works in their own district. In the company's previous Acts they have obtained powers to underpin houses, but clause 25 of the bill relates to the railway. It is as follows : " The company may from time to time strengthen and improve their railway, or any part or parts thereof, and may underpin and rebuild in such manner and of such materials as may be found expedient the side walls and foundations thereof, and in connection therewith may extend and enlarge their stations, platforms, sidings, works, and conveniences, and may make inverts under their railway, and for that purpose may excavate the soil under the railway." The existing works were constructed under parliamentary powers which gave the vestry the right to see that they were constructed in accordance with the Act under the supervision of their surveyor. Under the bill they take no power to open up the road, but

powers are given to do works which might injure the road.

The CHAIRMAN: If they did a thing injurious to you within their own property under this clause, would you have no legal remedy?

Saunders: I do not think I should. What they propose to do is to legalise that which would otherwise be a nuisance.

Mr. HEALY: If all the work is to be done within their own property, and if it injures no one, what do they want parliamentary powers for?

Saunders: They either want this power or they do not; if they do they should only get it with proper provisions for the public. The land on which the promoters propose to do this is only theirs in a sense, for the soil on which the railway rests is vested in us subject to the rights of adjoining owners, and by the decision in *Coverdale v. Charlton*, 4 Q.B.D. 104, not only the road and road materials, but so much of the subway as is necessary for sewerage and laying down pipes is vested in us. Although not quite ordinary landowners, we are the municipal landowners of the land through which the railway goes, and I contend that the soil under the railway is also vested in us for the purpose of putting sewers in it if necessary.

The CHAIRMAN: If this bill passed as it stands giving power to excavate the soil under the railway, and you have a sewer under the railway, this clause would entitle them to interfere with your sewer?

Saunders: Yes, without giving compensation; for, though they embody the Lands Clauses Act, that Act only applies to the construction of a railway, not to its alteration; and if they seek to do something which they could not do under their former Act we ought to be heard to see what is proposed, and that it is done subject to proper protection of the roadway above, for there is nothing to prevent a subsidence of the roadway if the works are improperly constructed as the whole support of the roadway depends upon the strength and proper structure of the side walls which they propose to alter. The roads are vested in us under the Metropolis Local Management Acts.

Mr. CHANDOS-LEIGH: Suppose a gas company were coming for a bill to reconstruct their mains, you would naturally ask for a *locus standi* against them?

Saunders: Yes.

Sir GEORGE RUSSELL: There does not seem any material difference between breaking a road in from the top and underpinning it so as to let it down.

Saunders: The petitioners also claim to be heard under S. O. 134 against clause 36 of the

bill which repeals sects. 26 and 27 of the Metropolitan and St. John's Wood Railway Act, 1873. Those sections are as follows: sect. 26: "Subject to the provisions of this Act, sect. 88 of the Metropolitan and St. John's Wood Railway Act, 1864" (which prohibited heavy goods traffic altogether) "is hereby repealed, provided always that it shall not be lawful for the company to carry heavy goods until the present line is double throughout"; sect. 27: "It shall not be lawful for the company to carry heavy goods on the railway of the company between the Swiss Cottage and Baker Street stations between the hours of eleven at night and six in the morning." By a bill of 1871 the promoters had proposed to repeal sect. 88 of their Act of 1864, and neither then nor in 1873 was the *locus standi* of the petitioners objected to, and in 1873 the modified prohibition as to goods traffic was inserted at the instance of the petitioners in the interest of the general public. We are equally entitled to be heard to protect the public on this occasion.

Mr. HEALY: The contention will be that you must show a *prima facie* case that you are injuriously affected.

Saunders: When a restriction, which secures quiet from heavy traffic during the whole of the night, is proposed to be repealed, the district must deteriorate in value, the rateable value of the parish will be diminished, for a large number of houses will be let for less, and therefore rated for less, and we as the rate-receivers will suffer, and quite apart from rates we represent the inhabitants, who personally suffer, and are entitled to be heard under S. O. 134.

Cripps, Q.C. (for (2) Vestry of St. Pancras): We raise the same point as to clause 25 of the bill as the Vestry of Marylebone. Another point is the power the promoters would have as regards land of which they are not the owners. By this clause, taken with the 40th section of the Lands Clauses Consolidation Act, 1845, they would be able for the purposes of their works to acquire additional land by agreement, and to that extent to do further injury to the vestry than if they were strictly limited to the present lands, and as regards works they may affect the surface of the road, and quite apart from all question of compensation we ought to see that the public are not injured.

Worsley Taylor (for promoters): Clause 25, with the exception of giving power to enlarge our stations, gives us no power to go one inch beyond our own property, that is to say, our railway, which we had power to make within certain limits, and the soil in a line below that

railway. By the decision in *Coverdale v. Charlton* the vestries are guardians of the right of the public to pass along the street, and have vested in them the surface of the road and what is sufficient to support it, and in addition they have a qualified right to put sewers under the street. There is nothing in this clause giving us any right to interfere with the surface of the street, and if we let down the street it would be actionable, and matter for compensation.

Mr. HEALY: This section only binds you to rebuild in such a manner as you may find expedient, and you might build in a manner the petitioners did not like.

Saunders: They might alter the levels of our streets.

Worsley Taylor: There is no distinction between them and any individual member of the public. I refer to the *Metropolitan Railway Bill*, 1877 (2 Clifford & Rickards, 38), which is a distinct authority for what I am contending, that in such a case as this, the remedy is by action, and that no *locus standi* is granted.

The CHAIRMAN: Apart from that point, even supposing the petitioners had a right of action for compensation, I am not sure that the Court would not be agreed that power should be granted to the vestry's surveyor to watch the works beforehand.

Mr. CHANDOS-LEIGH: In the case you referred to they were private petitioners; these petitioners are a public body.

Sir GEORGE RUSSELL: Why should the guardians of the public road be compelled to wait till injury has arisen?

Mr. HEALY: You cannot put the vestries on the same level as ordinary members of the public.

The CHAIRMAN: I think we must draw a distinction in favour of a public authority.

Worsley Taylor: As to clause 36, the restriction as to carrying goods traffic was not put in in the first instance for the benefit of the public, but for that of the railway company, and the petitioners' *locus standi* was not objected to. We did not admit the right of the vestry to be heard on this point, but they had a landowner's *locus standi*, and their petition containing an allegation about this clause, nobody could stop them arguing it.

Mr. CHANDOS-LEIGH: But this is a peculiar case. You come here asking to repeal two provisions inserted at the instance of these very gentlemen.

The CHAIRMAN: The petitioners having been before the Committee and having got the clause with the assistance of other people, it is going to be repealed by this bill, and they being a

representative body, it appears to me that they should be heard against an alteration of the bargain they got in 1873. The *Locus Standi* of both Petitioners is *Allowed* against clause 25; and the *Locus Standi* of (1) the Vestry of Marylebone is also *Allowed* against clause 36, and so much of the preamble as relates thereto.

Agents for Petitioners (1) and (2), *Dyson & Co.*

Petition of (3) The VISCOUNT PORTMAN.

Power to alter Railway Station erected on Petitioner's Land—Approval of Petitioner required by previous Act—Provisions of Bill inconsistent with Protective Clause.

The petitioner had obtained the insertion of clauses for the protection of his property in a previous Act of the company, the Metropolitan and St. John's Wood Railway Act, 1864, sect. 66 of which Act provided that the passenger station to be erected on his land "shall be constructed according to an external plan and elevation to be previously approved by the surveyor of the said Edward Berkeley, Baron Portman, and of the engineer of the company, or in case they cannot agree, by an umpire to be nominated by the Board of Trade." It was argued on his behalf that the words of clause 25 of the bill, "The company . . . may extend and enlarge their stations, platforms, sidings, works, and conveniences," would enable them to alter the existing station on the petitioner's land, without obtaining his approval, and that, accordingly, he was entitled to be heard against clause 25 to preserve his existing right:

Held, that the *status* of the petitioner under the Act of 1864 was so affected by clause 25 of the bill as to entitle him to be heard against it.

The *locus standi* of (3) Viscount Portman, against clause 25, was objected to on the following grounds: (1) no lands or property of his will, or can be, taken under the powers of the bill; (2) even if injury might be done to adjacent property under the powers contained in the said clause (which the promoters deny)

the petitioner is not entitled to be heard against the said clause in respect thereof, according to the practice of Parliament; (3) the said clause in no way affects the property, rights, or interests of the petitioner so as to entitle him to be heard against the same.

Cripps, Q.C. (for petitioner): Lord Portman claims to be heard against clause 25. His *locus standi* is admitted except as regards this clause. Ever since the company have gone through his land, clauses have been inserted for his protection, and at the present time the company cannot put any new buildings above the surface except the station, and those only in accordance with agreed plans. By the Metropolitan and St. John's Wood Railway Act, 1864, sect. 65, it is provided that "No part of the lands numbered 1 to 65" (which were the lands being taken from Lord Portman) "on the said plan, shall be used for any other purpose than for the line of railway and the passenger station connected therewith; and no steam engine shall be erected on any part of the said lands, nor shall any erection be made thereon above the present surface of such lands (other than such passenger station as aforesaid) without the consent in writing of the said Edward Berkeley, Baron Portman, his heirs, and assigns;" and sect. 66 further provides that "the passenger station to be erected on the said lands aforesaid, shall be constructed according to an external plan and elevation to be previously approved by the surveyor of the said Edward Berkeley, Baron Portman, and by the engineer of the company, or in case they cannot agree, by an umpire to be nominated by the Board of Trade"; and under the following sect. 67, Lord Portman has the right of pre-emption to superfluous lands, although they are situated within a town within the meaning of the 128th section of the Lands Clauses Consolidation Act, 1845. The lands, therefore, taken from Lord Portman are only to be used for a certain limited purpose, for the line of railway and the passenger station, and even as regards the passenger station only in accordance with plans to be approved as therein provided for. The Baker-street station has lately been enlarged on plans agreed with Lord Portman. There is no controversy between us that in all subsequent Acts similar clauses have been inserted for the protection of Lord Portman where his property was affected. This clause 25 would give the go-by to all this protection, and would enable sidings to be put upon the petitioner's land, against the positive enactments in numerous Acts of Parliament that no such sidings should be placed upon his land, and

stations to be enlarged without the plans being approved by his surveyor.

Mr. HEALY: Is it admitted that "line of railway" in Lord Portman's protective clause would not include sidings?

Cripps: That is so. The words are words of art, and exclude sidings. These special protective clauses are like an agreement between Lord Portman and the railway company.

The CHAIRMAN: For the purpose of *locus standi* it is sufficient if you show that this would interfere with Lord Portman's protection as regards stations. One thing would carry it as well as the other.

Cripps: Yes; whereas at present the company are under obligations to us with regard to the erections of stations, if this clause were passed, which is inconsistent with sect. 66 of the Company's Act of 1864, those obligations would no longer exist.

Worsley Taylor (for promoters): All we seek to do is within our existing powers, and there is nothing to affect the clauses for Lord Portman's protection now existing; if he is protected now he will be protected after the bill passes.

Mr. HEALY: If this bill passes without a repetition of the clause he will not be protected, for it is contended that you repeal them by implication, or rather you modify them in the sense of this clause 25.

Worsley Taylor: We cannot repeal them without expressly doing so; we may enlarge and extend our works within our existing rights only, and whatever restrictions exist as to our buildings or the purpose for which we use them they are not repealed in any way.

Cripps: Clearly it must repeal the existing provisions, because it is inconsistent with them.

The CHAIRMAN: It is not clear that this clause might not have the practical effect of repealing them, for when it is said absolutely that the company may do a certain thing, it could be argued that that over-rides the former Act by which you could only do it by consent.

The *Locus Standi* of the Petitioners against clause 25 is *allowed*.

Agents for Petitioner, *Dyson & Co.*

Petition of (4) THE REV. H. S. EYRE.

Rebuilding of Underground Railway—Adjacent Landowners Injuriouly Affected by Excavation

of Soil—Right to Lateral Support—Remedy at Law, how Affecting Locus Standi.

The petitioner was the owner of house property fronting upon a road under which the Metropolitan railway ran. He claimed to be against clause 25 of the bill, which empowered the promoters to underpin and rebuild their railway, "and to make inverts under their railway, and for that purpose excavate the soil under the railway." He complained that the effect of the proposed excavations might be to deprive his houses of lateral support and to cause their subsidence. In reply the promoters contended that in such an event he should be left to his legal remedy, and pointed out that, in a similar case, that of the *Metropolitan Railway Bill, 1877* (2 Clifford and Rickards, 38), the Court, following its usual practice in cases of "injurious affecting," where the property of a landowner is not taken, had disallowed the *locus standi* of owners of adjoining property:

Held, however, that the petitioner was entitled to be heard against clause 25 of the bill.

The *locus standi* of (4) The Rev. H. S. Eyre against clause 25 was objected to on the following grounds: (1) it is not alleged in the petition, nor is it the fact that any lands or property of the petitioner will or can be taken under the powers of the bill; (2) the only allegation in the petition with reference to the said clause is that contained in the latter part of paragraph 8 thereof. Even if that allegation were true (which the promoters deny), it does not disclose any ground upon which, according to the practice of Parliament, the petitioner is entitled to be heard against the said clause; (3) the petitioner has no such interest in the subject-matter of the said clause as to entitle him to be heard against the bill.

Willis-Bund (for petitioner): The petitioner is owner of property on both sides of the Finchley-road, and the promoters' railway runs under that road. My *locus standi* is only objected to as regards clause 25, and is not objected to as regards the clauses which seek to repeal my protection as to heavy traffic. This clause 25 is really to enable heavy traffic to be worked, and it is for that purpose that it

is necessary to strengthen the line. If I am entitled to be heard on the clause repealing the restriction as to heavy traffic, I contend I am entitled to be heard on this clause. The result of their works would be to let down the houses on the sides of the line.

Mr. HEALY: Had you any special provision put into the original Act to meet such a case as this?

Willis-Bund: No; but in the *Metropolitan and Metropolitan District Railway Companies Bill, 1879*, on the petition of Persons signing the *Petition of Owners* (2 Clifford & Rickards, 193), it was held that the owners and occupiers on the sides of streets, whose houses are to be underpinned, were entitled to be heard against an underpinning clause. Clause 23 of this bill provides for underpinning houses, but there is nothing as to underpinning gardens, or providing support to gardens, although they seek to excavate the soil under the railway and to scoop out the bed of the railway, and thereby deprive me of support which I now have; and I should not be able to restrain them from doing this, nor could I obtain an injunction, but I should have to stand and see my houses and gardens let down. If the promoters want to do no more than an ordinary landowner can do they need not come to Parliament, but if they are coming for something outside what the law gives them, to take away some right of mine, such as a right to support, then I ought to be heard, and if it is taken away, compensated for my loss.

Mr. CHANDOS-LEIGH: Can you distinguish your case from that of *The Metropolitan Railway Bill, 1877* (2 Clifford & Rickards, 38)?

Willis-Bund: Here there is an indefinite power of excavating, which is a very different clause to the one then before the Court, and no provision for our protection or compensation if we are injured.

Mr. CHANDOS-LEIGH: This clause 25 is a very extensive one. It alters, virtually, the whole character of the railway, and turns it into a totally different class of railway.

Willis-Bund: When the railway was being made I was entitled to be heard, and certain powers were granted on the faith that it was to be made in a particular way, and now they wish to alter the railway altogether, and attempt to deprive me of being heard as regards what may be a very serious injury to me.

Mr. HEALY: Would there be any remedy by damages at law for excavations carried out under clause 25?

Willis-Bund: Not if they were properly carried out.

Worsley Taylor (for promoters): Either there is express statutory power to excavate and let down the petitioner, in which case there is a remedy by compensation, or there is no such power; and if the company excavated and let him down there would be the remedy of action at law. In either case it comes to injuriously affecting, and is within the principle of the *Metropolitan Railway Bill*, 1877, which is a precisely parallel case.

Sir GEORGE RUSSELL: Speaking for myself, I must say I am unable to see either the force or the principle of the decision which is relied on, which in effect says that if injury is to be done, and there is a remedy for that injury, either by action at law or in the alternative by compensation, the person to be injured is to sit down and sustain the injury because he has that ultimate means of redress. That is the decision; but it does not commend itself to my mind.

The CHAIRMAN: To my mind there is no doubt that that is a clear precedent against a *locus standi*. I see also that the Court, in delivering the decision, said that it was in consonance with the usual practice of the Court. Of course we are not absolutely bound by precedent.

Worsley Taylor: As to the scope of clause 25, it is said that it means something more than we have got already, or else why do we put it in the bill? My answer is that we require power to spend money on this work. At present we have no power to do anything except on the railway as it exists. All that we seek to do is to exercise our rights as land-owners, and so far as the petitioner is concerned, there is no power to do anything outside our own land, and the question of sub-soil does not arise. All we can do to affect him is to take away adjacent support which he now enjoys, and that is absolutely within the principle of the case of the *Metropolitan Railway Bill*, 1877. I say we have no right to let the petitioner down, and if we did it would be actionable.

The CHAIRMAN: Evidently in the opinion of the Court in the case quoted there was a remedy.

Worsley Taylor: Yes; the grounds of that decision was damage accruing from works, and a money remedy.

Mr. CHANDOS-LEIGH: What do you say to the words in clause 25, "and for that purpose excavate the soil under the railway?" Suppose, in excavating, you do damage to the petitioner?

Worsley Taylor: Then he would be entitled to compensation, but not to a *locus standi*, according to the decision in the case I have

quoted. By the bill the Lands Clauses Act and the Railway Clauses Act are incorporated, and, therefore, we can only exercise this right subject to liability to compensate everybody injuriously affected. Subsidence would clearly be injuriously affecting.

The CHAIRMAN: The *Locus Standi* of the Petitioner is *Allowed* against clause 25, and so much of the preamble as relates thereto.

Agents for Petitioner, *Brown & Ringrose*.

Petitions of (5) THE LONDON, BRIGHTON AND SOUTH COAST RAILWAY COMPANY; (6) THE GREAT EASTERN RAILWAY COMPANY; (7) THE MIDLAND RAILWAY COMPANY; (8) THE GREAT NORTHERN RAILWAY COMPANY; (9) THE LONDON, CHATHAM AND DOVER RAILWAY COMPANY; and (10) THE GREAT WESTERN RAILWAY COMPANY.

All the petitioning companies claimed to be heard against clause 32 of the bill, which empowered the Metropolitan railway company to make agreements and arrangements for the working, management, regulation and interchange of through traffic, and of traffic coming from or destined for the railways of all or any of three companies—viz., the South-Eastern, the Manchester, Sheffield and Lincolnshire, and the Great Northern railway companies, and all matters connected with the working of such traffic, and the appointment of joint committees for carrying such agreements and arrangements into effect. The petitioning companies contended that this was a virtual amalgamation of the four companies for traffic purposes, which should not be sanctioned by Parliament without their being heard, and they claimed a *locus standi* in respect of diversion of traffic from their respective railways in consequence of the combination proposed by the bill. In the case of the London, Brighton and South Coast railway company, they claimed to be heard not only as competitors with one of the companies, the South-Eastern company, but as owners of portions of railway between London and Brighton, over which it would be necessary for the Metropolitan company to pass in order to reach the South-Eastern railway, and also as joint

lessees with the Metropolitan and South-Eastern companies of the East London railway, this latter ground of *locus standi* being also relied upon by the Great Eastern and the London, Chatham & Dover companies, who were also joint lessees. Counsel for the petitioners cited the case of the *South-Eastern Railway (Various Powers) Bill*, 1885 (Rickards and Michael, 62), on the petitions of the Great Northern, Midland, and Great Western Railway Companies as being on all-fours with the present case, and the Court, in accordance with the decision in that case, allowed the *locus standi* of all the petitioning companies against clause 32 of the bill.

The Great Western railway company (10) also claimed a *locus standi* against clauses 27-31 of the bill, which provided for the vesting of the Aylesbury and Buckingham railway in the Metropolitan railway company, on the ground of competition, and their *locus standi* was conceded.

The *locus standi* of the petitioners (5) was objected to on the following grounds: (1) the only provisions of the bill to which the petitioners by their petition object are those contained in clauses 32 and 33 of the bill, empowering the promoters and the South-Eastern railway company, the Manchester, Sheffield, and Lincolnshire railway company, and the Great Northern railway company to enter into agreements for the purposes therein mentioned; (2) the statements in paragraphs 4, 5, and 6 of the petition, even if accurate (which the promoters do not admit), do not disclose any such rights or interests on the part of the petitioners in or over the undertakings of the companies named in the said clause, or any of them, nor have the petitioners any such rights or interests therein or thereover as to entitle them to be heard against the bill; (3) the rights and interests of the petitioners in the undertaking of the South-Eastern railway company, and their rights and interests under the traffic agreement referred to in the petition, are in no way affected by the bill; (4) even if the effect of the said clause were as stated in paragraph 8 of the petition (which the promoters deny), the petitioners would not on that account, according to the practice of Parliament, be entitled to be heard against the bill; (5) the promoters deny that the bill will

empower the South-Eastern railway company to deal with any tolls, income, or receipts in which the petitioners are entitled to share, as alleged in paragraph 10 of the petition; (6) the rights of the lessee companies referred to in paragraphs 12 and 13 of the petition are in no way affected by the bill so as to entitle the petitioners to be heard, and the promoters deny that the bill will have any such effect as alleged or suggested in those paragraphs; (7) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard thereon against the bill.

The *locus standi* of the petitioners (6) was objected to on the following grounds: (1) on similar grounds to those taken in objection (1) to the *locus standi* of petitioners (5), *supra*; (2) the statements in paragraph 5 of the petition, even if accurate (which the promoters do not admit), do not disclose any such rights or interests on the part of the petitioners in or over the undertakings of the companies named in the said clause, or any of them, nor have the petitioners any such rights or interests therein or thereover as to entitle them to be heard against the bill; (3) the rights of the lessee companies referred to in paragraphs 5 and 9 of the petition are in no way affected by the bill so as to entitle the petitioners to be heard, and the promoters deny that the bill will have any such effect as alleged or suggested in those paragraphs; (4) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard thereon against the bill.

The *locus standi* of the petitioners (7) was objected to on the following grounds: (1) on similar grounds to those taken in objection (1) to the *locus standi* of petitioners (5), *supra*; (2) the promoters deny that the bill confers upon them any power which they do not already possess to admit the South-Eastern railway company to use or to grant to that company running powers over any portion of the promoters' railways, and, even were it otherwise, the petitioners would not on that account be entitled to be heard against the bill; (3) the possession by the petitioners of running powers over the widened lines does not, according to the practice of Parliament, entitle them to be heard against the bill; (4) the statements in paragraphs 9 to 14, even if accurate (which the promoters do not admit), do not, nor does the petition generally disclose any grounds upon which, according to practice, the petitioners are entitled to be heard.

The *locus standi* of the petitioners (8) was objected to on the following grounds: (1) on

similar grounds to those taken in objection (1) to the *locus standi* of petitioners (5), *supra*; (2) the promoters deny that the agreement referred to in paragraph 4 of the petition is in any way violated or affected by the bill, and even were it otherwise, the petitioners have no such rights under the said agreement as to entitle them to be heard against the bill; (3) the possession by the petitioners of running powers over the widened lines does not, according to the practice of Parliament, entitle the petitioners to be heard against the bill; (4) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard thereon against the bill.

The *locus standi* of the petitioners (9) was objected to on the following grounds: (1) it is not alleged in the petition, nor is it the fact, that any lands or property of the petitioners will or can be taken under the powers of the bill; (2) the rights and interests of the petitioners in the joint station and works at Aylesbury, mentioned in paragraph 4 of the petition, are not so affected by the bill as to entitle them to be heard against the same; (3) the petitioners have no such interest in the undertaking of the Aylesbury and Buckingham railway company as to entitle them to be heard against the transfer thereof to the promoters; (4) the petitioners have no such interest in the undertakings of the several companies mentioned in paragraph 8 of the petition as to entitle them to be heard against the bill, and the petitioners and their property, rights and interests are in no way affected by the powers sought by clause 32 of the bill; (5) the petition discloses no grounds entitling the petitioners to be heard according to practice.

The *locus standi* of the petitioners (10) was objected to on the following grounds: (1) on similar grounds to those taken in objection (1) to the *locus standi* of petitioners (5), *supra*; (2) the promoters deny that the effect or object of the bill is as stated in the fourth and fifth paragraphs of the petition, or that it would confer upon them any powers over the petitioners' lines, or that arrangements equivalent to amalgamation might be made thereunder, or that if such arrangements could be made thereunder they would have the effect of depriving the petitioners of traffic so as to entitle them to be heard against the bill; (3) the rights of the companies to whom the East London railway is leased are in no way affected by the bill so as to entitle the petitioners to be heard against the bill; (4) the petition discloses no grounds entitling the petitioners to be heard

against the bill thereon according to the practice of Parliament.

Saunders, Q.C. (for (5) the London, Brighton and South Coast railway company): Clause 32 of the bill provides: "The company on the one hand, and the three companies or any of them on the other hand, may from time to time enter into and carry into effect and rescind agreements and arrangements with respect to the following matters, or any of them; that is to say, "The working management, regulation, interchange, collecting, receiving, forwarding, transmission and delivery of through traffic and traffic upon, or coming from, or designed for, the railways of the contracting companies, or any of them. The through booking at the stations, warehouses, and booking-offices of the contracting companies of all such traffic. The fixing, collection, appropriation, apportionment, and distribution of the through and other tolls, rates, charges, income, and profits arising from the respective railways of the contracting companies, or any part thereof. And the appointment of joint committees for carrying into effect any such agreement." This means the control by one body, a joint committee, of railway communication between Liverpool and Southport, in the north, to Dover and all parts of the South-Eastern railway system in the south of England; and the first sub-section of the clause includes both through and local traffic. In other words, the Manchester, Sheffield, and Lincolnshire company may under the clause make arrangements for working traffic between London and Dover, or the South-Eastern company for working traffic from Manchester to Liverpool.

The CHAIRMAN: It must be an arrangement between the Metropolitan company on the one hand, and any one or all of the three companies named on the other hand.

Saunders: Yes; but if the Metropolitan be one of the agreeing companies, an arrangement can be entered into between the four companies which would practically amount to an amalgamation. The position of the Brighton company to the South-Eastern is a peculiar one. They each of them own separate portions of the railway between London, Redhill and Brighton, and if the Metropolitan obtained running powers over the South-Eastern, it would have to run over portions of our railway in order to get on to the South-Eastern towards Brighton, and it would, in my opinion, if it got those running powers, be held legally entitled to do so. We are also joint-owners of other portions of railway with the South-Eastern.

The CHAIRMAN: The arrangement proposed by the bill seems very much in the nature of a

large amalgamation, and the wording of the clause is extremely wide. Do you also raise the question of competition?

Saunders: Yes. We also have an agreement, which has been in force for 20 years, for pooling competitive traffic between ourselves and the South-Eastern company. Then we have another ground of *locus standi*. We are joint lessees with the Metropolitan company, the South-Eastern company, and three other companies of the East London railway, which is carried under the Thames in a tunnel, and forms practically the only access which the Metropolitan company have to the South-Eastern railway. I submit that two of the partners in the East London railway are not entitled to make arrangements affecting that railway without the other partners being heard, when the effect of the arrangements would be to send traffic on to the South-Eastern railway, which might otherwise pass on to our line. The proposal for a joint committee in the last sub-section of clause 32 means practically vesting the whole working of the traffic in one body.

Pember, Q.C. (for (6) the Great Eastern railway company): The Great Eastern company are, like the Brighton company, one of the joint lessees of the East London railway, and I pray in aid the arguments addressed to you on behalf of the Brighton company, against allowing two of the partners in the East London line to come to arrangement affecting traffic over that line behind the backs of the other partners. The Great Eastern company are in competition with the Great Northern company between Peterborough and London, and they exchange traffic with the Sheffield company at Retford. If the arrangements authorised by clause 32 of the bill are carried out, the Sheffield company will send traffic to London and the south beyond London over the Great Northern instead of our railway. The object of the Great Eastern company in becoming joint lessees of the East London railway was to get a fair share of the traffic going over it from north to south, and *vice versa*, but if the bill is passed they will be placed in a worse position with regard to competitive traffic, which can be carried either by the Great Northern or themselves.

Bidder, Q.C. (for (7) the Midland railway company): We are affected, as regards competitive traffic, by clause 32 in much the same way as the Great Eastern company. This case is on all-fours with that of the *South-Eastern Railway (Various Powers) Bill, 1885, on the petition of the Great Northern, the Midland, and the Great Western Railway Companies*

(*Rickards & Michael, 62*), and I claim a *locus standi* in accordance with the decision of the Court in that case.

Pope, Q.C. (for (8) the Great Northern, and (9) the London, Chatham and Dover railway companies), supported the contention of *Bidder*, Q.C.

Worsley Taylor (for promoters): If the Court think the cases are identical, I will not contest the *locus standi* of the petitioners further against clause 32.

The CHAIRMAN: The clauses in the two bills are not identical, but the circumstances appear to the Court to be the same. The clause in the bill is even more general and vague, and the petitioning companies will have a *locus standi* against clause 32, and so much of the preamble as relates thereto.

Saunders, Q.C. (for (10) the Great Western railway company), in addition to a *locus standi* against clause 32, claimed a *locus standi* against clauses 27—31 (inclusive), which provided for the vesting of the Aylesbury and Buckingham railway company in the Metropolitan railway company, and the admission of the latter company into the Aylesbury station, of which they were joint owners with the Aylesbury and Buckingham company; and his *locus standi* against these clauses was also conceded by the promoters.

Locus Standi of all the Petitioners (5—10) *Allowed* against clause 32, and so much of the preamble as related thereto.

Locus Standi of (10) the Great Western Railway Company also *Allowed* against clauses 27 to 31 (inclusive), and so much of the preamble as related thereto.

Agents for Petitioners (5 and 8), *Dyson & Co.*

Agent for Petitioners (6), *Moore.*

Agents for Petitioners (7), *Beale & Co.*

Agents for Petitioners (9), *Martin & Leslie.*

Agent for Petitioners (10), *Mains.*

Petition of (11) THE METROPOLITAN DISTRICT RAILWAY COMPANY.

In the case of these petitioners the promoters conceded a *locus standi* against clauses 25 and 37 of the bill as joint owners with themselves of the City lines.

Pope, Q.C., appeared for the Petitioners.

Agents for Petitioners, *Martin & Leslie.*

Petition of (12) THE STRATFORD-ON-AVON,
TOWCESTER AND MIDLAND JUNCTION RAILWAY
COMPANY.

The petitioners complained that by the construction of certain railways authorised by clause 4 of the bill, which would form a connecting line between the East and West Junction railway and the Aylesbury and Buckingham railway, and the vesting of the latter railway by the bill in the Metropolitan railway company, that company would be enabled to compete with them for traffic from the west of England destined for London, which would otherwise be carried over their railway and the East and West Junction railway (an arrangement having been come to between themselves and the East and West Junction company to work the two railways as one under a joint committee) and then handed over to the Midland or London and North-Western railway company to be conveyed to the south of England. The Court, however, held that the competition complained of would at most be an improvement of an existing competition, which could be already carried on by the Towcester and Buckingham railway authorised in 1889, against the bill for which the petitioners had been heard (*Towcester and Buckingham Railway Bill*, 1889, Rickards & Michael, 308), and Disallowed the *Locus Standi* of the Petitioners.

Whiteway appeared for the Petitioners;
Worsley Taylor, for the Bill.

Agents for Petitioners, *W. & W. M. Bell*.

Agents for Bill, *Sherwood & Co*.

NORTH BRITISH AND GLASGOW AND
SOUTH - WESTERN RAILWAY COM-
PANIES BILL.

Petition of (1) SHARP, STEWART AND COMPANY;
AND (2) WAREHOUSEMEN IN GLASGOW.

17th April, 1890.—(*Before Mr. PARKER, M.P.,
Chairman; The Hon. E. CHANDOS-LEIGH,
Q.C.; and Mr. BONHAM-CARTER.*)

*Railway Amalgamation—Traders affected by
Removal of Competition—Corporation of Royal
Scotch Burgh, how far representing Trades—
Agreement with Railway Company—Special
Injury—Distinction between Corporations of
English and Scotch Burghs—S. O. 133A
[Chambers of Commerce, &c., may be heard in
Relation to Rates and Fares.]*

The bill provided for the amalgamation of the
Glasgow and South - Western railway

company with the North British railway company, and for the dissolution of the City of Glasgow Union railway company and the vesting of its undertaking in the North British railway company. The petitioners were (1) a firm of locomotive engine builders, and (2) certain warehousemen, 35 in number, in the City of Glasgow. Petitioners (1) had a siding from the City of Glasgow Union railway into their works, and an agreement with that company, and at the present time divided their traffic between the North British and Glasgow and South-Western companies, who competed with one another for it. They complained that when this competition was removed by the amalgamation of these two companies under the bill, they would not be able to get such favourable rates for their goods, and they argued that the special character of their manufactures, which were incapable of being carted through the streets, to obviate which they had obtained a siding from the City Union railway into their works, and their agreement with that railway company gave them separate interests from those of the traders of Glasgow generally, which separate interests the corporation could not adequately represent before a Committee upon the bill. Petitioners (2) were unable to show any special interest differentiating their case from that of other traders, and their *locus standi* was disallowed by the Court:

Held, however, that petitioners (1) had such special and distinct interests, arising out of the nature of their business and their arrangements with the City Union railway company, that they could not be adequately represented by the corporation, and that they were therefore entitled to a *locus standi* against the bill.

[*Note*.—The case of (2) the warehousemen in Glasgow, was subsequently ordered by the House to be re-heard, on the ground that the corporation were not offering so active an opposition to the bill as to cover the case of the traders, while at the same time, an opinion was generally expressed by Scotch members who took part in the debate, that the right of

corporations of Scotch burghs should not be held so paramount as to exclude the hearing of traders on their petitions. The Court, thereupon, having in view the fact that the corporation were not conducting their opposition in such a manner as adequately to bring before the Committee on the bill the case of the traders, and that therefore the case of the latter would not be heard twice over, allowed the *locus standi* of these petitioners also. (See below, p. 53.)

The *locus standi* of (1) Messrs. Sharp, Stewart and Co. was objected to on the following grounds: (1) the bill does not prejudicially affect or interfere with any property, power, right, interest, or privilege of the petitioners; (2) it is not alleged in the petition, nor is it the fact, that the trade or business of the petitioners will be or is injuriously affected by the rates or fares proposed to be authorised or already authorised, and the petitioners are not entitled to be heard against the bill under S. O. 133A; (3) the interests of the petitioners are sufficiently guarded by the petition presented against the bill by the corporation of Glasgow, who are the representatives of the general trading interests of the City and Royal Burgh of Glasgow; (4) no grounds are alleged or exist entitling the petitioners to be heard according to practice.

The *locus standi* of (2) warehousemen in Glasgow was objected to on the following grounds: (1) the bill does not prejudicially affect or interfere with any property, power, right, interest, or privilege of the petitioners; (2) it is not alleged in the petition, nor is it the fact, that the trade or business of the petitioners will be or is injuriously affected by the rates or fares proposed to be authorised or already authorised, and the petitioners are not entitled to be heard against the bill under S. O. 133A; (3) the promoters do not admit that any such competition, as is alleged in the petition, exists between the North British and the Glasgow and South-Western railway companies, but even were the allegation correct, the amalgamation of those companies proposed by the bill will in no way injuriously affect the trade or business of the petitioners.

Worsley Taylor (for petitioners (1)): The petitioners are locomotive engine builders, and employ about 1,700 hands. Their works are situated at Springburn, and they have a siding from the City of Glasgow Union railway company by means of which their traffic is distributed between the North British company and the Glasgow and South-Western company,

who now compete actively for our traffic, but who by the bill are sought to be amalgamated, as is also the City of Glasgow Union railway company, which will also become North British. I claim a *locus standi* on general principles, and if necessary I can show a special case. The whole point is, are we represented by the corporation of Glasgow, whose *locus standi* is admitted? By means of the siding we get to two companies, and have consequently competition, and owing to the nature of our work we are absolutely dependent on railway connection, for we cannot cart locomotives through the streets. The invariable practice of the Court has been to allow a *locus standi* to a body of traders with a sufficiently substantial interest, when they say their position will be altered by the proposed amalgamation, and I cite the case of the *London and North-Western and Whitehaven, Cleator and Egremont Railway Companies Bill*, 1877 (2 Clifford & Rickards, 34). The corporation do not represent the petitioners, who have special interests on account of their siding and an agreement with the City of Glasgow Union railway company, though they may represent the general trade of the district. Even if before the Committee I unsuccessfully opposed the preamble, I might ask for a special clause, but it would not be within the power of the corporation to ask for such a clause, for their special function is to protect trade as a whole, and they could not put the case of individual traders. I grant that it has been held that Royal Scotch burghs are in a different position with regard to trade interests from English corporations, and that they are the guardians of trade generally, and when they are petitioning as protecting trade they have a right to appear, but not to the exclusion of traders having special interest to protect.

Mr. CHANDOS-LEIGH: I attach great importance to what you say, that the corporation could not see to your special interests, supposing you wanted clauses in your favour.

The CHAIRMAN: You say that you have an agreement with the Glasgow City Union, and have a siding to their line for your special advantage, and that you carry on a trade which especially requires a siding, the traffic from your works not being capable of being carted through the streets to another station. I think that makes it a very special case.

Worsley Taylor: We have no guarantee that, even supposing the corporation could protect our interests, they would continue to do so; there is nothing to prevent them coming to some settlement behind our backs.

The CHAIRMAN: It is evident from the nature of the thing that the better representatives the corporation are of trade interests as a whole, the worse representatives they might be of one section of the community, because the interests of the whole might over-ride the interests of a section. (*Great Western, Bristol and Exeter, etc., Railway Companies Bill, 1867, 1 Clifford and Stephens, 132.*)

Worsley Taylor: I ask for a *locus standi* on general grounds, and further, I submit that our siding and agreement give the petitioners a separate and distinct interest from the trade of Glasgow generally, as well as from any other trader in the city.

Pembroke Stephens, Q.C. (for petitioners (2)): The petitioners, comprising thirty-five firms, do not merely warehouse goods, but are traders of the very largest kind, and pay in railway rates annually more than £100,000, and as such, I submit, have an interest sufficiently substantial to entitle them to a *locus standi* against the proposed amalgamation. As regards our being represented by the corporation, that is not set up in the notice of objections to *locus standi*. The record before the Court is the bill, the petition, and the notice of objections, and as you would not allow anything to be introduced which was not in the petition, so you will not allow anything to be brought forward by the promoters which is not in the notice of objections, otherwise I come prepared to meet one case, and have another started on me.

The CHAIRMAN: Considering how much notices of objection often contain, which is irrelevant, when they omit to put anything forward, we ought, as a general rule, to be strict in not allowing it to be argued.

Pope, Q.C. (for promoters): Messrs. Sharp, Stewart & Co. have no other interests than that of being large locomotive engineers who have a siding on to the City of Glasgow Union railway, but they have no separate interest, nor have they anything to say which the corporation of Glasgow, who could of course put the manager of the firm into the witness-box, could not say as representing their trade. As to the petition of warehousemen, they do not even allege that they represent any particular industry, nor do they say they represent the warehousemen of Glasgow, but they simply petition as 35 individuals, and they will say the same thing as the corporation of Glasgow, viz., that the trade of the district is being put into the hands of one company, whereas there are two now. I submit that they have no separate interests which will entitle them to be heard, and that the corporation of Glasgow

will fairly represent them. The practice of the Court in such matters is laid down in *Smethurst on Locus Standi*, 2nd Ed., p. 76, which distinguishes between English municipal corporations and the corporations of Royal burghs in Scotland. In the case of *The Midland and Glasgow and South-Western Railway Companies Bill, 1867* (1 Clifford & Stephens, 72), the *locus standi* of merchants in four cases was disallowed. I ask you whether that case, and the principle laid down by Smethurst, does not lead you to the conclusion that the proper course is to leave the discussion of this matter to the corporation of Glasgow, and to avoid the expense of allowing two petitioners to be heard in the same interest.

Mr. CHANDOS-LEIGH: It is a question for us whether we think the petitioners, or either of them, are in such a position that they could not be fairly represented by the corporation.

The CHAIRMAN: We think that Messrs. Sharp, Stewart & Co. are entitled to a *Locus Standi*; but the *Locus Standi* of the Warehousemen must be *Disallowed*.

Agents for Petitioners (1), *Grahames, Currey and Spens*.

Agent for Petitioners (2), *Beveridge*.

21st April, 1890.—(Before the Court constituted as on 17th inst.)

Beveridge, parliamentary agent (for the 35 Warehousemen of Glasgow whose *locus standi* had been disallowed), applied to the Court to consent to a motion in the House to allow all parties to be heard against the bill who had deposited petitions in due time, the bill being an amalgamation bill.

Mr. CHANDOS-LEIGH: I have seen the chairman of Ways and Means on this matter and shown him the precedent of the *Thames Embankment (North) Bill, 1872* (2 Clifford and Stephens, 262), where the Referees had decided that the *locus standi* of the corporation of the City of London should be disallowed, and three days afterwards Mr. Crawford, one of the members for the City, had moved "That it be an instruction to the Committee on the bill that they do hear the Mayor, aldermen and commons of the City of London in their opposition to the bill," and the chairman on that precedent thought that it would be more advisable (leaving his hands perfectly unfettered whether he should support such a motion or not) that the motion should be moved, not formally by him, but by some independent member who must do it on his own responsibility.

23rd April, 1890.—(*Before the Court constituted as before.*)

The House having to-day instructed the Court forthwith to rehear the case of the Warehousemen of Glasgow who petitioned against the North British and Glasgow and South-Western companies bill, and there having been a general opinion expressed in the House by the Scotch members who took part in the debate, that the right of corporations in Scotland, even in the case of Royal burghs, to represent traders ought not to be carried higher than in the case of English corporations, so as to exclude the trades themselves from being heard, and the fact having been mentioned that in the particular case before the House the corporation of Glasgow, who in their petition undertook to represent the trades of Glasgow, were not offering so active an opposition to the bill as in any way to cover the case of the trades, the Court, on re-considering the case, were of opinion that, the ground on which the *locus standi* had been disallowed (namely, that if the *locus standi* of the warehousemen was allowed as well as that of the corporation of Glasgow, the same case would be heard twice over) having disappeared, the *Locus Standi* of the Petitioners should be *Allowed*.

Petition of (3) THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY; AND (4) THE SOLWAY JUNCTION RAILWAY COMPANY.

The petitioning companies, both of whose railways were worked by the Caledonian railway company, alleged injury by competition, the character of which would, they stated, be altered by the amalgamation authorised by the bill. The promoters contended that the position of the petitioners would not be affected by the bill, and that in any event their case was really covered by that of the Caledonian company. Petitioners (3) also complained that the Glasgow and South-Western company were guilty of breach of faith with respect to an agreement they had made with them in 1877, and that that company had failed to carry out an obligation imposed upon them by sect. 28 of the Caledonian Railway (Abandonment) Act, 1869, to send certain traffic over the petitioners' railway. As to this the promoters contended that the remedy of the petitioners was by recourse to a Court of Law, to whom the petitioners had unsuccessfully appealed, and further pointed out that all the obligations imposed upon the Glasgow and South-Western

company by existing Acts would, by the law relating to railway amalgamations, be transferred to the amalgamated company. On this point, as upon that of competition, the Court held that the existing *status* of the petitioners (3 and 4) was not sufficiently altered to entitle them to be heard. *Locus Standi* accordingly *Disallowed*.

Cripps, Q.C., appeared for Petitioners (3); *Pembroke Stephens*, Q.C., for Petitioners (4); *Pope*, Q.C., for the Bill.

Agents for Petitioners (3), *Martin & Leslie*.

Agents for Petitioners (4), *Tahourdin & Co*.

Agents for Bill, *Sherwood & Co*.

PARTICK, HILLHEAD AND MARYHILL GAS AND ELECTRICITY BILL.

Petition of COMMITTEE OF RATEPAYERS, GAS CONSUMERS AND FEUARS IN KELVINSIDE, AND OTHERS.

1st May, 1890.—(*Before Mr. PARKER, M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. SHIRESS WILL, Q.C., M.P.; Mr. COMPTON, M.P.; Mr. HEALY, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.*)

Gas Company without Statutory Powers Supplying Gas in Competition with Municipal Corporation—Bill for conferring Statutory Powers upon Company—Prohibition of Supply by Corporation within Limits Supplied by Company—Removal of Competition—Ratepayers and Gas Consumers Injuriouslly Affected—Public Meeting—Rights of Individual Gas Consumers—S. O. 134 [Municipal Authorities and Inhabitants of Towns.]

The promoters were a gas company incorporated under the Companies Acts, 1862 to 1886, but without statutory powers, and were at the present time supplying gas to some of the suburbs of Glasgow. The bill conferred statutory powers upon the company, and defined its limits of supply so as to include the suburban districts of Kelvinside and Clydebank, in which the petitioners were ratepayers and gas consumers, both districts being within the statutory limits of supply of the corporation, and parts of them being at the present time supplied by both the corporation and

the company in competition with one another. Clause 60 of the bill prohibited the corporation in the future from supplying gas within the limits of supply assigned to the company by the bill, thereby precluding all competition between the corporation and the company in the districts in which the petitioners were ratepayers and consumers. The corporation supplied gas at cost price, and thus compelled the company to charge similarly low rates in the districts common to them both, and the petitioners complained that they would be deprived of this advantage if the corporation were prohibited from any longer supplying their districts. The petition was headed, "The humble petition of a committee of ratepayers and consumers of gas and feuars in the district of Kelvinside, and of ratepayers, consumers of gas, and feuars therein; the Police Commissioners of the burgh of Clydebank; and Messrs. J. & G. Thomson, shipbuilders and engineers, Clydebank," and was signed by the chief magistrate and clerk of the Police Commissioners of Clydebank, and by Messrs. J. & G. Thomson, the *locus standi* of both being conceded, and by 18 persons who described themselves as a committee of consumers of gas and ratepayers, and individually as consumers of gas and ratepayers. The petition contained a statement that 23 persons had been appointed to serve on the committee, of which all the petitioners were members. The promoters objected that the petition did not state the numbers who attended the meeting at which the committee was appointed, and that in fact the number was only 27, of whom 13 only were in favour of opposing the bill. Under these circumstances they objected that the petitioners did not adequately represent the consumers of gas and ratepayers of Kelvinside and Clydebank, and were not entitled to be heard under S. O. 134 :

The Court however held, following the decision in the *Basingstoke Gas Bill*, 1887 (Rickards and Michael, 137), that it was not necessary that the petitioners should petition in a representative capacity, or under S. O. 134,

but that they were entitled to be heard on their petition against the part of the bill (Part I.) relating to gas.

The *locus standi* of the petitioners was objected to on the following grounds: (1) no land or property of the petitioners is sought to be taken compulsorily or otherwise interfered with under the powers of the bill; (2) the rights and interests of the petitioners are represented by the County Road board of the county of the lower ward of Lanark, who are the local authority of the district of Kelvinside, in the county of Lanark, and who, as such, are petitioners against the bill, and whose *locus standi* is not objected to; (3) the petitioners do not allege and do not possess any rights or interests separate and distinct from those represented by the said local authority, nor do the petitioners represent the ratepayers or the inhabitants of the said district of Kelvinside within the meaning of S. O. 134; (4) the petition does not disclose the number of persons present at the alleged meeting of ratepayers, consumers of gas, and feuars of the district of Kelvinside, held on 29th January, 1890, nor the rateable value of their property, and no means is afforded of testing the statements in the petition with respect to these matters. The fact, however, is that the meeting alluded to in the petition was attended only by 27 persons, of whom 13 voted in favour of the resolutions for opposing the bill, and 10 voted in its favour, 4 declining to vote; (5) the petition does not show that the petitioners have any such interest in the objects and provisions of the bill, or that any of their rights and interests will be so affected by it as to entitle them, according to the practice of Parliament, to be heard against it.

Pembroke Stephens, Q.C. (for petitioners): This is the petition of "a committee of ratepayers and consumers of gas and feuars in the district of Kelvinside, and of ratepayers, consumers of gas, and feuars therein; the Police Commissioners of the burgh of Clydebank; and Messrs. J. & G. Thomson, shipbuilders and engineers, Clydebank." The bill incorporates and confers statutory powers of lighting by gas and electricity upon the Partick, Hillhead and Maryhill gas and electricity company, which company already supplies gas to Kelvinside without statutory powers, and defines the limits of supply of the company so as to include Kelvinside and Clydebank, and at the same time clause 60 of the bill prohibits the corporation from any longer supplying gas within those limits. Clause 60 is

as follows: "From and after the passing of this Act, all powers possessed by the Glasgow corporation of laying down and maintaining pipes and meters, and supplying gas within the limits of the Act, or any part thereof, and all powers incidental thereto shall cease and determine; and the Glasgow Corporation Gas Acts, 1869 to 1888, and all other Acts conferring such powers on the Glasgow corporation, shall, in so far as conferring such powers, be and are hereby repealed, and the Glasgow corporation shall not, after the passing of this Act, supply gas or lay down or maintain pipes or meters for supplying gas to consumers within the limits of the Act, without prejudice however to their supplying their present customers within the limits of the Act until the first day of January, one thousand eight hundred and ninety-one; and declaring that nothing herein contained shall prejudice the right of the Glasgow corporation to lay mains or other pipes, or erect or maintain gas works within the limits of the Act for the purpose of manufacturing gas, or supplying it to districts outside the limits of the Act." At the present time both the corporation, who have statutory powers of supplying gas, and the company supply gas in Kelvinside and Clydebank, or at any rate in parts of those two districts, in competition with one another, and the company are obliged to supply at the same price as the corporation, who regulate the price so as to cover the expenses of supply, but not to yield any profit. The result of the bill will be to abolish this competition and raise the price of gas by the company to the consumers, by establishing a monopoly in favour of the company.

Richards (for promoters): I concede a *locus standi* to the Police Commissioners of Clydebank, and to Messrs. Thomson, shipbuilders, Clydebank, but I object to the other 18 petitioners, against whose signatures is written "committee of ratepayers, consumers of gas and feuars and ratepayers, consumers of gas, ratepayers and feuars," being heard to represent gas consumers and ratepayers generally. The petitioners come here either as a committee of ratepayers and gas consumers appointed at a meeting, which we say was too small to be representative, or as individual ratepayers and consumers, in which case they are too few in number to represent ratepayers and consumers as a whole.

Mr. CHANDOS-LEIGH: How do you get over the decision in the *Basingstoke Gas Bill*, 1887 (*Richards & Michael*, 137)?

Richards: In that case the committee were appointed at a meeting attended by between

200 and 300 ratepayers. In this case the petitioners were appointed to act as a committee at a meeting attended by 27 persons, of whom 13 voted against, 10 in favour of the bill, and 4 abstained from voting.

The CHAIRMAN: The insignificance of the meeting does not affect the right of consumers to be heard.

Mr. SHIRESS WILL: Nobody represents consumers. The only question is, whether their complaint is frivolous or substantial.

Richards: The heading of the petition shows that either the petitioners appear as a committee of gas consumers and ratepayers or they appear as individuals. They cannot be heard in both capacities.

Stephens: There is a committee; but as individuals they also claim a right to be heard.

Mr. CHANDOS-LEIGH: It seems to me that this case is on all fours with the *Basingstoke* case.

Richards: There are cases on the other side as strong as the *Basingstoke* case. My proposition is this: that these gentlemen are not a body of inhabitants within the meaning of S. O. 134.

Mr. SHIRESS WILL: Consumers are not represented by any local authority.

Richards: I cite the following cases to show that consumers of gas have been refused a *locus standi* on the ground that they stand in a different position to consumers of water: *Sutton Gas Bill*, 1876 (1 *Clifford & Rickards*, 266); *Castleford and Whitwood Gas Bill*, 1878 (2 *Clifford & Rickards*, 78); and the *Gas and Water Orders Confirmation (Thirsk District Water Order) Bill*, 1879 (*ib.*, 161). On the principle of those cases individual gas consumers cannot be heard against a bill including them within a district for the purposes of gas supply, and for this reason, that, unlike water consumers, there is no obligation upon them to take gas.

Mr. CHANDOS-LEIGH: The leading feature of this case is that the bill takes away competition.

Richards: It gives the petitioners the right to take gas from us instead of from the corporation.

Mr. CHANDOS-LEIGH: Here are consumers taking gas from the corporation, you say there is no obligation upon them to take it from you in future, and that justifies you in taking away the power of supply from the corporation. Was it proposed in any one of the cases cited to deprive the consumers of the existing supply?

Mr. CHANDOS-LEIGH: In deciding that the petitioners are to be heard as gas consumers, we should be following the decision in the

Birmingham and Staffordshire Gas Bill, 1875 (1 Clifford & Rickards, 135). There the petitioners petitioned both as ratepayers and as gas consumers, and we allowed their *locus standi* as gas consumers.

MR. SHERIFF WILL: They are entitled to say on their own behalf everything that could be said by the whole body of ratepayers.

THE CHAIRMAN: The *Locus Standi* of the Petitioner is Allowed against Part I. only of the Bill, which deals with the supply of gas as distinguished from electricity.

Agents for Petitioner, *Martin & Leslie*.

Agents for Bill, *Lock & Goodhart*.

RIBBLE NAVIGATION BILL.

Petition of THE CORPORATION OF SOUTHPORT.

18th March, 1890.—(Before Mr. PARKER, M.P., Chairman; Mr. COMPTON, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Corporation of Seaport seeking to Borrow Additional Money for making Deep Water Channel—Neighbouring Corporation Alleging Injury to Tidal Flow—Works already Authorised by Previous Acts—Complaint against Existing Legislation—Restrictions on Works Imposed by Bill—Control of Board of Trade.

The bill was for enabling the corporation of Preston to give effect to an interim report of a commission appointed, in pursuance of the Ribble Navigation Act 1889, to inquire into *inter alia* the practicability and cost of providing a navigable waterway between Preston and the sea, in accordance with certain plans authorised by the Ribble Navigation Acts, 1883 and 1888, or with any other plans suggested by the commission, and the advisability of maintaining and completing certain existing training walls; and the bill further authorised the corporation of Preston to borrow additional money for carrying out the works already authorised by the Ribble Navigation Acts. The bill was opposed by the corporation of Southport, a favourite watering-place on the coast of Lancashire, a short distance north of the estuary of the Ribble, on the ground that the promoters ought not to be

allowed to raise additional money for carrying out works which might injure the tidal flow past Southport, by causing silting or accretions of soil in rear of the training walls, without their being heard to obtain clauses for their protection. They also complained that the corporation of Preston had exceeded their powers under the Ribble Navigation and Preston Dock Act, 1883. On this point counsel for the promoters contended that the remedy for any illegal action of the corporation, if it had taken place, lay in an appeal to a Court of Law, while as to the general case of the petitioners for a *locus standi*, he pointed out that the bill authorised no new works, but only gave the promoters power to carry out those which Parliament had already sanctioned, and that therefore the complaint of the petitioners was against existing legislation; while raising further money was a question for the ratepayers of Preston, and did not concern the petitioners, who were not complaining of any provision in the bill, which in fact imposed restrictions upon the promoters by requiring them to carry out their existing powers under the control of the Board of Trade, such restrictions being favourable to the petitioners and in accordance with the interim report of the Commission:

Held, that under these circumstances the *locus standi* must be disallowed.

The *locus standi* of the petitioners was objected to on the following grounds: (1) paragraphs 2 and 3 of the petition are recitals only of certain contents of the bill; (2) paragraphs 4 to 8 (both inclusive) are statements of the interests of the petitioners, the accuracy of which the promoters do not admit; (3) the promoters deny that the petitioners are injuriously affected by the bill as alleged in paragraph 9 of the petition; (4) the petitioners did oppose the Ribble Navigation and Preston Dock Act, 1883, but no provision was inserted for their benefit, nor was the termination of the south training wall fixed at their instance, or on their opposition, but was the termination proposed by the promoters in the bill for that Act as deposited and sanctioned by Parliament; (5) the promoters do not admit the statements in paragraph 11, but even if true they show no

ground entitling the petitioners to be heard against the bill; (6) the promoters do not admit the allegation in paragraph 12 that they have prolonged the said south training wall beyond the termination thereof sanctioned by Parliament, and even if they had done so the petitioners have their legal remedy; (7) the promoters deny the allegations in paragraph 13, and that they have injured the petitioners as therein alleged, and even if they have the petitioners have their legal remedy against the promoters, which is in no way affected by the bill; (8) it is no action of the promoters which has prevented the petitioners bringing any grievance before Parliament, if which the promoters deny any such grievance exists; (9) the petitioners were not heard before the commissioners on any matter, which is the subject of the interim report referred to in paragraph 15 of the petition, or in any way dealt with by the bill, but on endeavouring to be heard were told that the commissioners were not then dealing with anything which entitled the petitioners to be heard, nor were they so entitled in fact; (10) the petitioners themselves allege in paragraph 16 that the sole object of the bill is to raise further funds, and the petitioners are not entitled to be heard against a bill promoted by the corporation of Preston to raise further funds for the execution of works already sanctioned by Parliament, and in no way altered by the bill; (11) the absence from the bill of the provisions referred to in paragraph 17 of the petition does not entitle the petitioners to be heard against the bill; (12) the promoters deny that clause 7 of the bill is illusory, or that it is framed for the purpose alleged by the petitioners in paragraph 18, but even if the allegations in the said paragraph were true, they do not, nor do any of them, entitle the petitioners to be heard against the bill; (13) paragraph 19 is a general allegation which the promoters deny, and which, even if true, does not entitle the petitioners to be heard against the bill; (14) the promoters have power given them by their Acts to do certain works. If they exceed that power, and by so doing injure the petitioners, they have a remedy in the Courts, and the bill in no way extends or alters that power; (15) the petition does not allege or disclose any right or interest, or any ground of objection, which according to the practice of Parliament entitles the petitioners to be heard against the bill.

Pope, Q.C. (for petitioners): This bill is promoted under very special circumstances. It is entitled "A bill to enable the mayor, aldermen and burgesses of the borough of Preston to give effect to the interim report of the Ribble

navigation commission, and to borrow additional moneys for the purposes of the Ribble navigation and Preston dock undertaking, and for other purposes." The circumstances which led to that commission being appointed are shortly these: In 1883, the Preston corporation promoted a bill for the construction of docks, and deepening of the channel of the Ribble, which the corporation of Southport and others interested in the estuary of the Ribble opposed. The petitioners feared that the construction of the training walls in the estuary might result in reclamations behind them, which would affect the channel, and anything affecting the influx of the tide in that particular neighbourhood is of great importance to Southport, which is a favourite watering-place, a little to the south of the estuary of the Ribble. The bill of 1883 was passed, but with the provision that the training walls should not be extended seaward beyond a point marked upon a plan signed by the chairman of the committee. The corporation proceeded to carry out their works, and greatly exceeded and departed from their powers, and, in 1888, they promoted a bill to sanction the deviations from their plans of 1883, and to obtain additional money for the purpose of completing the works which they had commenced and to some extent carried out in excess of their powers. Parliament granted them only a limited sum of money to overtake the responsibilities they had incurred, stayed the execution of the works, and directed them to devise, in combination with certain of their ratepayers, who had become discontented with their proceedings, a mode of carrying out the works which would be agreeable to all parties. In 1889, they again came before Parliament and were again opposed by the ratepayers who objected to the course the corporation had taken; the terms of the decision come to by Parliament are to be found in the Ribble Navigation Act 1889, Parliament insisting that a Commission should be issued by the Board of Trade to ascertain whether and how far the money that had been spent should be supplemented, and how far the works which they had already carried out should be carried forward to completion. This Commission met, and reserving for subsequent discussion the question of the possibilities of a deep water access to the sea which they would not decide without hearing those who were interested in the discussion of the question, they presented an interim report, and the avowed object of this bill is to carry out that interim report. The petitioners were represented before the Commission, and stated what

was the mischief they apprehended, viz., that if in a navigable channel training walls were constructed of the character contemplated in the Act of 1883 (which training walls were wrongly extended by the corporation), in the rear of those walls so much slackness of the tidal flow would be created that silting would become inevitable, reclamation would follow, and the maintenance of a navigable channel round the coast become almost impossible, and in the suggestions which the Commissioners make in their report, they adopt almost the words made use of by the petitioners in stating what was necessary in order to secure them from the mischief which they apprehended. The Commission recommends two things mainly, first, that there should be no more deposits such as have been made seaward of the point signed by the chairman of the Committee in 1883, but that the dredging deposits ought only to be made generally in such a way as not to create banks in a continuous line so as to increase the probability of accretion; and, secondly, the report says that the walls already constructed must not be raised any higher, and there must be a reduction in the height of certain of those walls, in order that there may be no danger such as is apprehended by Southport. Instead, however, of the bill containing any provisions rendering imperative the suggestions of the Commission, it proposes definitely to give to the Board of Trade powers to depart from those recommendations and to sanction deposits of dredging and the construction of walls which we say would be absolutely injurious to us, and it contains no protection of those whom the Commission certainly intended should not be injured; nor is there any provision in the bill for the reduction in height of certain walls. A clause has just been inserted in the bill incorporating the Harbours, Docks, and Piers Clauses Act, 1847, but that is leaving to the Board of Trade what we say should be decided by Parliament after hearing us.

The CHAIRMAN: The policy of Parliament was to require the Board of Trade to appoint a Commission. That Commission decided certain points to your satisfaction, and you say, let Parliament, in giving new powers, have their attention called through us to what the Commission did recommend.

Pope: Yes; I submit that I am entitled to be heard as to the sufficiency of the authority given to the Board of Trade in the bill, and I am entitled to be heard to argue that, where the bill is entirely silent as to the recommendations of the Commission, the carrying out of those recommendations shall be made an absolute legislative obligation on the corporation, and

not the subject of reference to a department at all.

Mr. HEALY: Pending the report of the Commission, were the powers of the corporation suspended?

Pope: Yes; because they were refused any money to go on with the work.

The CHAIRMAN: All you ask is to be present to say, do not give them the money necessary to carry out the powers which stand suspended, unless they will make such a provision as to carry out obligatorily the report of the Commission.

Pope: Yes, and to see that the money they ask for shall not be expended in future to the possible detriment of Southport. The question of the proper channel upon which to spend money was raised by the discontented rate-payers of Preston.

Mr. HEALY: Then it would seem that the powers of the corporation were suspended, not in consequence of any action of yours?

Pope: No; in consequence of internal action on the part of their own ratepayers. This bill gives extensive jurisdiction to the Board of Trade over the estuary of the Ribble, which makes the petitioners' case stronger than in 1883, for they have since then acquired 3,860 acres upon the estuary of the Ribble, and whereas they are not now subject to the jurisdiction of the Board of Trade, this bill will make them so.

Mr. HEALY: Do you say that it was in your interest that some of the recommendations were made by the Commission?

Pope: Some of the recommendations are curiously enough in the very language employed by the petitioners in addressing the Commission.

Bidder, Q.C., (for promoters): The works, which Parliament authorised the corporation to construct in 1883, consisted practically of two parts, a large and expensive dock in Preston at the head of the tidal flow, and the power to make these training walls, and dredge right down to the sea. In 1888 I admitted to Parliament that we had exceeded our powers in respect to the dock, but with this the petitioners have nothing whatever to do, and it was never suggested that, as regards the works in the estuary, we had done anything contrary to our powers. What the discontented ratepayers said was, "do not grant the additional borrowing powers for the additional works, because this way to the sea is not the best way, and, also, the dock is too large," and they persuaded Parliament to stop the completion of the dock; but so far as regards the estuary works that Southport is interested in, there was no alteration or suspension at all, but money was given to secure that the dredging should be continued. By

sect. 59 of the Act of 1883, the only area within which the corporation may deposit dredgings shall be the area shown on the plan signed by the chairman of the Committee, and that area goes a mile seaward of the end of the training wall. It is not suggested by the Commissioners that we have deposited material where we have no legal power to deposit it, but what they say is, "We are of opinion that until we have heard the other parties interested in the estuary, and have come to a decision as to the best navigable channel from Preston to the sea, it is essential that the dredged material removed from the river east of Lytham should only be deposited in such localities and at such levels as will in no way" not, injure Southport but, "prejudice the question," and it is on this the petitioners seek to obtain a *locus standi*, and assume that that recommendation was put in for their benefit, whereas it was put in so that the question between the corporation and their own dissentient ratepayers which way to take the channel to the sea should not be prejudiced.

The CHAIRMAN: Southport would probably be one of those parties interested.

Bidder: They would if the Commissioners determined to report that not the authorised channel, but some other channel going in the direction of Southport, and beyond the parliamentary powers already granted, should be recommended to Parliament. Before the Commission the petitioners said they were only present to watch the case, and that they did not consider they had any right to intervene unless the existing parliamentary powers were proposed to be extended by the report recommending further legislation.

Mr. BONHAM-CARTER: It is suggested in the petition that you have exceeded your powers of depositing dredging material under the Act of 1883.

Bidder: That statement is absolutely untrue, and if true, the Court of Chancery would interfere. I can bring evidence to show that we have deposited dredging only within the area in which Parliament expressly required it to be deposited. I say in whatever I have done, I have acted strictly within my right. I have never denied the fact that I have deposited material where they say I have deposited it; but I say I have an absolute right to put it there, and Southport has no right to object. The Commissioners did not recommend the discontinuance of the deposit of the dredgings in a certain locality on account of injury to Southport, but they recommend that the dredgings should only be deposited in such positions as not to prejudice the question of the channel.

Mr. HEALY: Is not the object of clause 6 to prevent you depositing dredged material in such manner as would continue the training wall?

Bidder: Yes; as long as the Commission think it is not desirable for us to do so. The whole bill is to carry out this report in its entirety, and with a view to that object it makes the Board of Trade the controlling authority by incorporating the Harbours, Docks and Piers Clauses Act, 1847, sect. 12 of which makes the consent of the Board of Trade a condition precedent to the execution of any works such as those authorised by the Ribble Navigation Act. Then clause 6 imposes a restriction upon the deposit of dredging material which does not now exist, and protects the petitioners in a way in which they are not now protected. Clause 6 is as follows: "From and after the passing of this Act all material dredged or raised by the corporation under the provisions of the Ribble Navigation Acts shall be deposited only in such positions within the area specified in sect. 59 of the Act of 1883 as the Board of Trade may from time to time prescribe." The bill is for the benefit, not the injury of the petitioners, and if it were withdrawn we should have our present powers unrestricted. We have got money for the dredging, but not enough for all purposes.

Mr. CHANDOS-LEIGH: That is a question for the ratepayers.

Mr. HEALY: The complaint is not that these clauses are in the bill, but that they do not go far enough.

Bidder: The ground of *locus standi* against a bill is that it contains something injurious to petitioners, not that it does not contain something for their benefit. This is purely a money bill and a restrictive bill: it seeks for no powers whatever which we have not at the present time, but simply restricts the present powers of the promoters as regards the place of deposit and the control of the works.

The CHAIRMAN: You say the complaint of the petitioners is against existing legislation, all that is new being additional restrictions and the power to raise money.

Bidder: Yes; and that they cannot be heard against the money part of the bill, that being a question for the ratepayers.

Mr. HEALY: It can hardly be said that this is merely a money bill, because it is expressly stated that it is a bill to carry out the interim report of the Commissioners.

The CHAIRMAN: The promoters would say it is a bill to give effect to that report by restricting the powers of the corporation of Preston.

Bidder: The Commission reported to the Board recommending a certain limitation, and

at the same time they recommended that we should have certain money powers. We come with a bill to get those powers, and we think it proper at the same time to carry out in good faith the recommendations of the Commission, and to put ourselves under the control of the Board; but the recommendation was not put in to protect Southport from injury, but to prevent a prejudging of the question which way the channel is to go.

MR. HEALY: Yes; I think it is perfectly plain that that recommendation about the dredging was principally with the object of not prejudging the question of the channel; but at the same time we cannot leave out of sight that while it leaves the question of the channel open it also prevents the virtual extension of the training wall.

BIDDER: Yes; but there is a distinction between that and Southport having anything to do with it. The Commissioners say their object is to secure a good fixed channel from Preston to the sea. Then the question, they say, is, shall we secure that by keeping the present gut channel or go to the right or left? If we go to the right or left we shall have to consult other people, but we will keep that question open. Do not deposit any more of this dredging material in this position; do not prejudge the question. In the meantime the bill authorises no new works, and imposes some new restrictions which are more or less favourable to the petitioners.

THE CHAIRMAN: The *Locus Standi* of the Petitioners is *Disallowed*.

Agents for Petitioners, *Lewin, Gregory and Anderson*.

Agents for Bill, *Dyson & Co.*

RICHMOND FOOT-BRIDGE (LOCK, ETC.) BILL.

Petition of (1) THE VESTRY OF HAMMERSMITH; (2) THE BOARD OF WORKS FOR THE WANDSWORTH DISTRICT; (3) THE CHISWICK LOCAL BOARD; (4) INHABITANTS AND RATEPAYERS OF MORTLAKE AND RIPARIAN OWNERS; AND (5) THE DUKE OF DEVONSHIRE.

1st May, 1890.—(Before Mr. PARKER, M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. SHIRESS WILL, Q.C., M.P.; Mr. COMPTON, M.P.; Mr. HEALY, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Navigable River—Construction of Bridge and Weir, with Removable Sluices—Local Authorities, Inhabitants, Ratepayers, and Riparian Owners

Alleging Injurious Affecting—Injury to Residential Property—Diminution of Tidal Scour—Representation by Conservancy Board—Remoteness of Injury—S. O. 134 [Municipal Authorities and Inhabitants of Towns].

The object of the bill was to preserve a certain quantity of water in the reach of the Thames opposite Richmond at low water, and for that purpose it authorised the construction of a foot-bridge, the arches of which were occupied by removable sluices. The petitioners (1, 2, and 3) were the local authorities, under the Metropolis Management Acts, of districts below the proposed works, the nearest part of the district of one of them being eight miles below the works; (4) a committee of inhabitants and ratepayers of another parish, which also fronted on the river, appointed at a vestry meeting held to consider the bill (to this petition there being added the signatures of three riparian owners in the parish); and (5) the owner of a valuable residential property on the banks of the river three miles below the site of the works. The local authorities and committee of inhabitants claimed to be heard under S. O. 134 on behalf of their districts, which they alleged would be injuriously affected by the retardation of the tidal flow and the diminution of scour, which they apprehended would result from the construction of the proposed works, and the riparian owners alleged similar injurious affecting of their property, and all the petitioners urged that the works were of so novel a character as to render their effect upon the river impossible to estimate without adducing exhaustive evidence on both sides. The promoters objected to the *locus standi* of the petitioners on the ground (1) that in respect of any effect by the works upon the river they were represented by the Thames conservancy; (2) that they were not entitled to be heard on account of the distance of their districts and property from the proposed works, and the remoteness of the injury apprehended by them:

Held, however, that probability of injury and not distance was the point to be con-

sidered; that the conservancy (upon which the petitioners were not directly represented) could not be considered as representing the private interests of the petitioners, which might be different from those of the navigation generally; and that the *locus standi* of all the petitioners must accordingly be allowed.

The *locus standi* of the petitioners (1), (2), (3) and (5) was objected to on similar grounds, *mutatis mutandis*, viz.: (1) the petitions do not allege or show, nor is it the fact that any land, house, property, right or interest of the petitioners will be or can be taken or affected under the powers of the bill or in consequence of the execution thereof; (2) the districts of the petitioners are situated several miles down the river Thames from the site of the proposed works, and the suggestion of injury to the part of the river to which their districts front is purely hypothetical. If any such injury as is suggested is likely to result to the districts (which the petitioners altogether deny), it would be too insignificant and too remote to entitle the petitioners to be heard against the bill; (3) the whole case raised upon the petition is based upon the assumption that the river Thames will be injuriously affected by the construction of the proposed works. If there be any ground for such a contention (which the promoters altogether deny), the question is one which should and will be raised by the conservators of the river Thames who have petitioned against the bill, and whose *locus standi* is not objected to; (4) the bill does not contain any provision affecting the petitioners; (5) the petitions do not allege or show that the petitioners have, nor have they in fact, any such interest in the objects and provisions of the bill as entitles them to be heard against it.

The *locus standi* of (4) inhabitants, &c., of Mortlake, was objected to on similar grounds, and because "the petition does not show, nor is it the fact that the petitioners petitioning as the inhabitants of the parish of Mortlake, sufficiently represent, or that the inhabitants present at the meeting referred to in paragraph 4 of the petition sufficiently represented the inhabitants of the said parish of Mortlake."

Richards (for petitioners (1) and (2)): The Hammersmith petition raises the same questions as are raised by the Wandsworth district board of works, they ask to be heard as representing the inhabitants of the district for sanitary purposes, and as owners of a wharf which is used for the purposes of their district.

The CHAIRMAN: The main objection apparently will be that there are conservators whose duty it is to see that the navigation is maintained, and that they would sufficiently represent you, and that you are too remote from the bridge and lock to entitle you to be heard.

Richards: The broad effect of the bill is to reduce the length of the tidal area of the river at a point below that at which it is now checked at Teddington lock, and I submit in so important a question as this all I have to show is a reasonable probability of injury to my district which is five or six miles below the proposed works.

[Mr. Law, C.E., explained the construction of the proposed foot-bridge to the Court, and produced a photograph and model of it. It consisted of a bridge about 350 feet in length, with five openings with sluices capable of being lowered and raised, and which would be entirely removed during the upper half of the flowing tide, and stowed away underneath the roadway of the bridge. Under the arch on the Surrey side there was to be a lock, and under the Middlesex arch boat slides, so as not at any time to interfere with the passage of large or small boats. The upper part of the sluices were made buoyant, and the water would raise the sluices so as to leave a clear space between the lower edge of the sluices and the bottom of the river, so that there would always be water running underneath them. The object of the sluices was to keep back a certain amount of the ebb tide so as to procure a certain depth of water opposite Richmond at low tide.]

Richards: There is nothing in the bill to bind the promoters to preserve a flow of water under the sluices at low tide.

The CHAIRMAN: Do you say your district is affected in a different way from other districts?

Richards: I do not know that I can say that, but part of the injury to the Hammersmith vestry would arise as owners of some wharves, and on the general case this is such an entirely new experiment that the degree of injury and effect generally upon the local authorities and riparian owners below the proposed bridge must be an uncertain quantity.

The CHAIRMAN: I observe this in the bill (clause 18), that when the works are completed they are to vest in and be maintained by (and I suppose to be controlled by) the conservators, that is, the conservators would work the sluices as they thought best for the river in general. You say that though they might work the sluices the best way for the river in general, they might work them so as to injure you.

Rickards : Yes ; and though it is proposed by the bill that the conservators shall control the working of these sluice gates, they are going to object to having this obligation imposed upon them, and it might be struck out of the bill by the Committee.

Mr. CHANDOS-LEIGH : On the face of the bill the conservators stand in the position of people promoting the bill, for they are to do everything, whereas we find that they oppose it.

Rickards : The object of this lock is to keep more water in the river at low water opposite Richmond and Twickenham and to benefit that section of the river to the probable injury and inconvenience of those below. With regard to the question of remoteness, I refer to the *Wakefield Water Bill*, 1874 (1 Clifford and Rickards, 122). In that case the petitioners, the corporations of Doncaster and Sheffield, were 32 miles from the point where the water was to be abstracted ; also to the *Liverpool Water and Improvement Bill*, 1887 (Rickards and Michael, 167).

The CHAIRMAN : You may assume that the Court will hold that where there is a river affected in any way, injury, not distance, is what governs the case. Of course there is the other question of representation, but it is a very common case where water is abstracted from a river for every one along the river to come and say, Our water will be taken away : and of course it becomes an engineering question to what extent that will be the case. The degree of injury is not measurable by miles exactly.

Rees, parliamentary agent (for promoters) : I admit that the mere objection of remoteness by itself is not an answer to the petition, but the petitioners must show the probability of injury.

Rickards : I say it is for the promoters to show that no injury could arise in a case like the present. With regard to the question of representation of the petitioners by the conservancy board, the Thames conservators are a body 23 in number, four of whom are representatives elected by persons above Teddington lock, while the remainder represent the navigation interests, the Trinity masters, and the corporation of London. It is proposed by this bill to give a representation to two parishes below Teddington lock, namely, Twickenham and Richmond. At present the parishes below Teddington lock have no direct representation on the Thames conservancy.

The CHAIRMAN : If the bill proposes to alter the representation, it seems to me that you might very well say that you are entitled to see that the conservators who are proposed to

be added represent your interests. According to the preamble, none of the conservators directly represent the interests of the riparian parishes of which you are one.

Rees, parliamentary agent (for promoters) : Neither the petition of the Hammersmith vestry, nor the petition of the Wandsworth district board of works refers to this question.

Mr. SHIRESS WILL : It is not a point you would expect them to raise in their petition. You say they ought not to be heard to allege that they will be injured because somebody represents them, and the answer is, " upon the showing of the bill they do not represent us."

Rees : I say the conservators have the sole charge, and represent the river *quâ* navigation. I do not say that they represent the riparian parishes or the other petitioners in other matters than navigation.

The CHAIRMAN : Of course the conservators might say : " You in Hammersmith or Wandsworth must be content with a certain amount of water passing by your wharves, because it is in the general interests of the river that you should only have that amount," and the petitioners may wish to say : " We have invested our money in the wharves, and we are entitled to the present amount."

Rickards : It has been held in many cases that the conservancy board of a river does not represent all interests ; in the *Manchester Ship Canal Bill*, 1885 (Rickards and Michael, 46), Miss Watts was allowed a *locus standi*. The objection was that she was represented by the Mersey commissioners, and the Court held that her interests were entirely distinct from the conservancy board interests. We say that some of our interests might be affected, which it would be no part of the duty of the conservators to look after.

The CHAIRMAN : That case of Miss Watts seems to me to be very much in point ; although what was proposed to be done might have been the best thing in the world for the river, it might have considerably injured her foreshore.

Rickards : The riparian property in Hammersmith alone represents a ratable value of £15,067.

Sir GEORGE RUSSELL : You say the objects of the conservancy are general ; your object is specific ?

Rickards : Yes, and different in its nature.

Mr. SHIRESS WILL : The conservators, in their petition, say the object of the bill is to have a large sheet of water opposite Richmond and Twickenham at the expense of the people below, and you are one of them.

Rickards : There is that amount of similarity in our two petitions, but there are many im-

portant points of divergence between them. The Thames conservancy are not a local authority, and they are not owners of wharves as we are. The case for the Wandsworth district board of works is much the same, only that their district is two miles further down the river.

Mr. HEALY: Have the Wandsworth district board of works any wharves?

Richards: They have two docks, I am told, although there is no allegation to that effect in their petition.

Baggallay (for petitioner (3)): Our general case is the same as that of petitioners (1) and (2), and I will not repeat the arguments used in their behalf; but one of the grounds of objection to our being heard being that we are covered by representation, I will briefly point out what the constitution of the Thames conservancy is. Under the Thames Conservancy Act, 1857, no place except the city of London was represented. Then, by the Act of 1864, six conservators were added, but still there was no representation of any district; and then, in 1886, when the jurisdiction of the Thames conservancy was extended from Staines to Cricklade in Wiltshire five conservators were added, four being elected by the riparian owners above Staines, and one by the Board of Trade. There is therefore no representation whatever of riparian owners, or of local authorities in any of the districts below Richmond alleged to be affected by this proposed lock and weir. The Thames conservancy were originally constituted as purely a navigation body, but later jurisdiction was given to them to see to the purity of the water above the in-takes of the London water companies above Teddington. By the report of the Thames Flood Prevention Committee of 1877 it is shown that the Thames conservancy have no jurisdiction to prevent floods, and, therefore, when a local authority alleges that the floods in their district will be increased by the making of the proposed works, it is no answer to say that the Thames conservancy safeguard the interests of the river. That is the present state of things.

The CHAIRMAN: What you allege in your petition seems to be analogous to the case of Miss Watts against the *Manchester Ship Canal Bill*. Nothing is more difficult than to foretell what will happen in such a case.

Baggallay: Yes, this bill proposes to alter the constitution of the Thames conservancy, and upon that I cite the *North-Eastern Railway Bill*, 1871 (2 Clifford & Stephens, 149). There it was held that the corporation of South Stockton were not represented by the Tees conservancy

commissioners, although they had five representatives upon the Board.

Mr. HEALY: The two conservators proposed by the bill to be added to the board of conservancy, representing the parishes of Twickenham and Richmond, would represent the promoters rather than the opponents of the scheme.

Pembroke Stephens, Q.C. (for petitioners (4) and (5)): The petitioners (4) are a committee appointed by the vestry, and, as appears on the petition, they sign on behalf and by authority of the inhabitants and ratepayers of the parish of Mortlake in vestry assembled. Fifteen of the petitioners are described as members of the committee, and three as riparian owners and occupiers. The petition alleges an apprehension of damage by the proposed lock and weir similar to that expressed by the other petitioners in this case. With regard to (5), the petition of the Duke of Devonshire, his Grace petitions in respect of Chiswick house and the grounds attached to it, which are three miles below the site of the proposed bridge and come right down to the bank of the river, with a frontage of two miles. The effect of widening London bridge, the embankment, and other works many miles away, has been to send up the tidal water in such quantities that his Grace, for no other purpose than that of protecting these lands and keeping pace with the result of the alterations of the river, has had to expend nearly £18,000 in raising the banks of his property from time to time, and in this case it is impossible to tell what the result of the works will be, whether to cause flooding, or a deposit of soil in the bed of this portion of river.

Bidder, Q.C. (for promoters): As regards the petition of (4) inhabitants and ratepayers of Mortlake, three of them are owners or occupiers of property abutting on the Thames and have riparian rights, but the rest are simply people who live in a parish which abuts upon the river, and I submit that does not give them the position of riparian owners. It is not because they have constituted themselves a committee that they can get any right of *locus standi*. They are not the sanitary authority, and the sanitary authority of Mortlake does not petition. You have not in the petition the signatures of the vestry, you only have the signatures of the gentlemen constituting a committee appointed at a meeting in vestry, and they do not allege that the vestry are riparian owners.

The CHAIRMAN: The petitioners are a committee appointed at a vestry meeting of a parish, which is a riparian parish.

Bidder: The petitioners generally apprehend a certain retardation of the tide, and a diminution of the tidal scour, which is the very thing which the conservators are appointed to deal with. They are a body whose statutory existence is for the purpose of protecting the navigation and the tidal interests of the Thames, and Parliament has imposed upon them the duty of preserving the navigation, and they are the actual owners of the bed of the river. If the conservators do not represent the interests of the riparian proprietors, near or remote, then anybody down at the Nore has a right to be heard, because people at Gravesend have an interest in the diminution of the scour.

The CHAIRMAN: They would have to show a probability of injury. That is the principle the Court has laid down. The navigation of the river might be improved, and yet specific interests must suffer.

Bidder: We have no desire to shut out from being heard anybody who can be said reasonably to apprehend injury, and for that reason have not objected to the *locus standi* of riparian owners, barge owners, and others above Kew bridge, but none of the petitioners come under that category. Of the local authorities who petition none of them are riparian owners, or at any rate allege in their petitions that they are so, except the vestry of Hammersmith, and the nearest part of the district of some of them is eight miles below the proposed works. I submit that on the ground of representation by the conservancy and the remoteness of injury apprehended, the *locus standi* of the petitioners should be disallowed.

Sir GEORGE RUSSELL: All these petitioners in my judgment establish a *prima facie* case of injury, the amount of which can only be ascertained by evidence.

The CHAIRMAN: The *Locus Standi* of all the Petitioners is *Allowed*.

Agent for Petitioners (1), *W. W. Young*.

Agents for Petitioners (2), *Jordan & Son*.

Agents for Petitioners (3), *W'gatt & Co*.

Agents for Petitioners (4), *Sherwood & Co*.

RHYMNEY RAILWAY BILL. [H.L.]

Petition of (1) BARRY DOCK AND RAILWAYS COMPANY; (2) TAFF VALE RAILWAY COMPANY.

12th June, 1890.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Mr. HEALY, M.P.: The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Practice—Bill before Second House—Competing Bills introduced by Promoters and Petitioners in First House—Rejection of Petitioners Bill—Claim to be Heard to Obtain Running Powers in Second House—Special Circumstances.

The bill which had originated in the House of Lords, authorised the Rhymney company to make a railway (No. 1) up the Aber valley, from a point on their existing railway, thus giving them a direct access from that valley to the port of Cardiff. The petitioners (1) and (2) claimed a *locus standi* under the following circumstances. Both the petitioners had, in common with the Rhymney company, introduced bills into Parliament for the construction of railways covering the same ground as that of the Rhymney company, but before the bills had reached the Committee of the first House, to whom they had been referred, the Barry docks company had withdrawn their bill, having come to an agreement with the Taff Vale company for running powers over certain of their railways, including the proposed line up the Aber valley. The Committee to whom the Taff Vale and Rhymney companies' bills were referred, had rejected the bill of the former and passed the bill of the Rhymney company, which was now before the Court. The promoters argued that neither of the petitioners had any right to be heard against their bill, as they no longer had competing bills of their own. Both the petitioners, whose case was practically the same so far as *locus standi* was concerned, contended that the fact of their having been promoters of bills for railways to serve the Aber valley in the present Session, was evidence of their interest in the traffic coming from that valley, which traffic they maintained would, by means of the

proposed railway, be diverted by the Rhymney company from their docks and railways to the docks at Cardiff, and they claimed to be entitled to go before the Committee on the bill to ask for running powers and facilities, which it would have been competent for them, had they deemed it advisable, to have asked of the Committee of the first House. They further asserted that the general manager of the promoters had assented to giving them facilities in his evidence before the Committee of the House of Lords, but this was denied by the promoters:

Held, that the petitioners not having, at the present time, competing bills before Parliament, were not entitled to a *locus standi* against the bill.

The *locus standi* of the petitioners (1) and (2) was objected to on similar grounds, namely, (1) the petitioners do not allege in their petitions, nor is it the fact that the bill contains any provision for taking any of their lands, or interfering with any property, right, power, or privilege of theirs; (2) the circumstances stated in paragraphs 6 and 7 of the petition of the Barry docks, &c., company, and in paragraphs 5 to 10 of the petition of the Taff Vale company (even if true, which the promoters do not admit) do not entitle the petitioners, or either of them to be heard against the bill; (3) the petition does not allege, nor is it the fact that the petitioners will be injuriously affected by, nor that any competition between the petitioners or either of them and the promoters, will result from the provisions contained in the bill; (4) the petitioners do not allege any grounds in their petitions, nor have they any interest which entitles them to be heard on their petitions against any of the provisions of the bill consistently with the ordinary rules and practice of the House of Commons.

Pember, Q.C. (for (1) the Barry docks, &c., company): The bill proposes the construction of a railway, No. 1, in what is called the Aber valley, in continuation of the Aber branch railway of the Rhymney company. We also brought forward a bill in the present Session for a line along this valley, to connect it with our docks, and the two bills were referred to the same Committee of the House of Lords as competing bills, but as the Taff Vale company also had a scheme for a railway up this valley, we withdrew our bill, and came to an agreement with the Taff Vale company, that if they

got power to make their line, we should have running powers to Walnut Tree junction, and over their line up the Aber valley. The Committee, however, passed the *Rhymney Bill*, and rejected the *Taff Vale Bill*; and what we say is that, seeing the Rhymney have free access to the Bute docks at Cardiff, it would be their interest to divert traffic from the Aber valley to Cardiff rather than to the Barry docks, and we ask, in the event of the bill being passed, to have a clause inserted giving us running powers over these proposed railways. It being practically impossible in these little valleys to make competing railways, Parliament has invariably said, we will open these valleys to all ports, and put the different railway companies into communication with all the valleys.

Mr. HEALY: If you had not abandoned your line it would have connected you directly with Walnut Tree junction?

Pember: Yes; I am in the same position with regard to the promoters, who by this proposed line will come down from Aber to Walnut Tree junction, as I was with regard to the Taff Vale company when they came down from Rhonda to Pontypridd and Treforest, and I obtained facilities with compulsory running powers over the Taff Vale from Treforest, where I joined them; and I submit I ought to be allowed to go before the Committee and ask for similar running powers in this case, for I have such an interest in the valley and the traffic to arise in it, as entitles me to be put upon the same favourable footing for getting hold of a share of the traffic as I should have been if the Taff Vale line had been passed, in which event I should have had facilities over their proposed line.

The *CHAIRMAN*: Suppose this had been the first House, you unquestionably would have had a *locus standi* as a competing line; then what has happened is this: the bills have gone to the other House, and you make a bargain with one of the companies, but you rode the wrong horse, and that bill has been rejected, and the consequence is you are no longer in the position of a company with a competing bill, but still you claim to have the fact considered as evidencing your interest in this valley.

Pember: And I ask to be allowed to say that I should be treated in the same way with regard to this valley as I am with regard to the other.

Pope, Q.C. (for (2) Taff Vale): Our case is practically the same. It was our bill which was rejected by the House of Lords. The general manager and engineer of the Rhymney company said they were willing to grant

facilities for the traffic of other companies, and after that expression of willingness on his part their line was sanctioned. Can they now assume that Parliament did not intend that those facilities should be given, and as we cannot now appear as competing companies, are our mouths to be shut?

Mr. CHANDOS-LEIGH: There was nothing to prevent you in the first House from bringing up clauses.

Pope: No; I thought the bill would emerge from the other House with those facilities in it after what was said by the general manager.

Mr. CHANDOS-LEIGH: Supposing the House of Lords had said on your bringing up clauses, we will not have these clauses, then surely your *locus standi* would have enured to the House of Commons to bring them up there.

Pope: That is the point.

Mr. BONHAM-CARTER: But you must have a *locus standi* before the Committee to present your clauses, and you are liable to have your *locus standi* disallowed on its being objected to.

The CHAIRMAN: In the House of Lords if you had chosen to bring up these clauses you had a perfect right to do so, as you had a *locus standi*. Then the question arises, "Have you lost that right merely because the House of Lords has decided against you on the merits?"

Bompas, Q.C. (for promoters): All the petitioners say is that they desire to obtain some advantages if our bill passes, and I submit that is not a ground for a *locus standi*, and the fact that in the House of Lords there was an alternative line cannot affect their present position.

The CHAIRMAN: Suppose two water companies proposed to supply the same town and the two bills came before the Committee as competing bills. When one succeeds and the other is rejected, the one that is rejected is dead so far as regards its power to follow the successful bill into the other House. So if two companies propose to take the same piece of land to construct a railway upon it, the one that is successful escapes opposition from the other in the second House. So far as regards that general principle we are not disposed to throw any doubt upon it. What took place in the House of Lords is, therefore, very important, because the question is whether what passed in regard to facilities makes any difference between this case and an ordinary case.

Bompas: What took place before the Committee of the House of Lords was this: The Taff Vale company, having made the agreement already referred to with the Barry docks, came and said, "Give us our bill and reject the Rhymney, or, if you pass the Rhymney bill

give us running powers so that we may both have a right to this valley." In the course of the case a suggestion was made that if we got our bill it would make it likely that goods would go more readily to Cardiff, the lead to which was all on our own line, than to Penarth, the route to which consisted of two lines, and our general manager, Mr. Lundy, was asked how that was to be prevented, and he replied, not by our giving a binding clause, but by our reducing the rates to the same rates as we get ourselves when we go to Cardiff, in the way effected by Sir George Eliott's clause. The decision of the Committee thereupon was, "We think that so much of the preamble of the *Rhymney Bill* as refers to the Aber valley is proved, and we see no reason for giving running powers to the Taff Vale company." It was therefore no good their bringing up running power clauses after having fought the question out on preamble.

Mr. HEALY: It seems to be admitted that the Committee adjudicated upon this question of running powers.

The CHAIRMAN: But not, it is argued, upon the question whether they should have facilities under Sir George Eliott's clause.

Bompas: If the Taff Vale had the least ground for saying that we should not treat them fairly, they could have put into one of their bills a clause compelling us to grant those facilities.

Mr. HEALY: Can a *locus standi* be claimed by a railway company merely for the purpose of demanding facilities of this kind?

Bompas: No; I submit that the only ground of *locus standi* is that the bill will or may in some way injure the person who seeks to oppose.

Mr. CHANDOS-LEIGH: Can the petitioners ask for running powers in the second House, having been refused them in the first?

Pope: Yes; the difficulty is not as to raising the question of running powers again, but whether I can raise anything or whether I am absolutely defunct. I could not ask for anything unless I had a *locus standi* to appear before the Committee, and the question you have to decide in this case is whether the desire or the right to ask for these running powers gives such a right of *locus standi*.

Mr. HEALY: Is it a ground for a *locus standi* to say, this is a new line, we want running powers over it?

Pope: That is the question.

Bompas: I confidently say it is not. The most the Taff Vale alleges is that there was some remark of Mr. Lundy that the traffic should have facilities, but that cannot give a

locus standi, for which some agreement or undertaking would be required. It would only entitle them, if they had a *locus standi*, to go to the Committee of the second House and say it was admitted that it would be the right thing to give them. Parliament will not hamper any railway company by unnecessary restrictions. If the Taff Vale can show that we are not acting fairly, then they can come to Parliament and get their remedy.

Mr. HEALY: I cannot see that a demand for such restrictions can be a ground of *locus*, and it also seems to me that the petitioners want to argue not only that they shall have running powers over the portion to be made, but over the existing line not dealt with by the bill at all.

Bompas: The Barry company voluntarily withdrew their bill, and not having a rival scheme before Parliament they clearly cannot be entitled to a *locus standi*.

The CHAIRMAN: The *Locus Standi* of both Petitioners is *Disallowed*.

Agents for Petitioners (1), *Dyson & Co.*

Agents for Petitioners (2), *Sherwood & Co.*

Petition of (3) THE PONTYPRIDD, CAERPHILLY AND NEWPORT RAILWAY COMPANY.

The petitioners claimed to be heard against the construction of railways Nos. 2, 3 and 4, authorised by the bill, on the ground of competition. They had no railways of their own to the places to be served by the proposed railways, and no access to them, but they regarded the district to be served by railways Nos. 2, 3 and 4 as a district which territorially belonged to them and not to the promoters. The Court, in the absence of competition by the proposed railways for traffic already served by the Petitioners, *Disallowed* their *Locus Standi*.

Pope, Q.C., appeared for the Petitioners; *Bompas*, Q.C., for the Bill.

Agents for Petitioners, *W. & W. M. Bell*.

Petition of (4) THE MARQUESS OF BUTE AND THE TRUSTEES OF THE WILL OF THE LATE MARQUESS OF BUTE.

Bill for Construction of Several Railways—Land of Petitioners Crossed by one Railway—General Locus Claimed as Landowner.

Clause 5 of the bill authorised the construction of four short railways, of which No. 1

railway had no connection with the other proposed railways, and the raising of additional capital for their construction. One of the proposed railways (No. 2) crossed a piece of land belonging to the petitioners, who claimed to be heard generally against the bill as landowners whose property was to be taken compulsorily:

Held, that the petitioners were entitled to be heard generally against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petitioners allege in paragraph 2 of their petition that the promoters propose to acquire compulsorily lands and property belonging to them, and they object thereto. The only property of the petitioners thus proposed to be acquired is a piece of waste land alongside of an occupation road to be crossed by railway No. 2 of the bill; (2) the promoters submit that under these circumstances no lands or property of the petitioners will be affected or interfered with by the bill in such a manner as to entitle them to be heard against the bill; (3) the petitioners should, if allowed to be heard, be confined to railway No. 2 of the bill, they having no interest in or right to be heard against any of the other railways proposed by the bill; (4) the allegations contained in paragraphs 3 to 8 inclusive of the petition (even if true, which the promoters do not admit) are not such as to entitle the petitioners to be heard according to practice; (5) the petitioners have no interest which entitles them to be heard on their petition against any of the provisions of the bill consistently with the ordinary rules and practice of the House of Commons.

Pember, Q.C. (for petitioners): We are landowners and own a small plot of land, which one of the proposed railways crosses. The scheme is made up of four bits of line.

Mr. HEALY: There appears to be no physical connection between railway No. 1 and railway No. 2.

Bompas, Q.C. (for promoters): No; they are in separate valleys.

The CHAIRMAN: Are all those lines, 1, 2, 3 and 4, part of one scheme?

Pember: They are all included in one works clause, and the petitioners submit that they are entitled to a general *locus standi* as landowners.

Bompas: I admit the piece of land crossed gives the petitioners the right to oppose

2, 3 and 4; the only question is whether they have a right to say anything as regards railway No. 1, which is in a different valley, and has no more to do with the other railways than if it were in South Wales, and I submit they ought to be limited to the subject-matter in which they are interested, and that this is not a *bonâ fide* landowner's opposition, but is in the interests of the Taff Vale company, whose *locus standi* has throughout been a very doubtful one.

The CHAIRMAN: The *Locus Standi* is Allowed.

Agents for Petitioners, *Grahames & Co.*

Agents for Bill, *Wyatt & Co.*

SOUTH-EASTERN RAILWAY BILL. [H.L.]

Petition of THE OVERSEERS OF THE POOR FOR THE PARISH OF ST. SAVIOUR'S, SOUTHWARK.

16th June, 1890. — (Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Railway Company acquiring Lands for Widening and Additional Purposes—Demolition of House Property—Overseers of Poor—Diminution of Rates during Construction of Works—Quantum of Injury.

This was an omnibus bill, which provided, *inter alia*, for widening the South-Eastern railway, and for that purpose empowered the company (clause 4) to take certain lands in the parish of St. Saviour, Southwark, of which the petitioners were the overseers of the poor, and (clause 14) certain other lands in their parish for additional purposes. The total amount of rateable property upon the lands named in clauses 4 and 14 amounted at the present time to about £10,000, the whole rateable value of the parish being £220,000; and the loss of rates during the construction of the works by the demolition of this property was estimated at £800 a year. Counsel for the promoters argued that the bill did not provide for the immediate erection of works or the demolition of house property on the lands to be taken under clause 14, but the Court pointed out that as they were

acquired for the purposes of the railway that would involve the demolition of houses upon them:

Held, that the diminution of rates during construction apprehended by the petitioners was of a sufficient amount to entitle them to be heard against clauses 4 and 14 of the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege or show nor is it the fact that any land, house, property, right, or interest of the petitioners will be taken, or injuriously affected, under any of the powers of the bill, or in consequence of the execution thereof; (2) the promoters deny that the purchase of lands and the construction of works proposed to be authorised by the bill, will occasion any such deficiency in the assessments of the rates within the parish of St. Saviour, Southwark, as alleged in the petition, as would entitle the petitioners to be heard against the bill upon that ground. If the petitioners have any right to be heard at all against the bill, upon the ground set forth in their petition, which the promoters deny, they have no right according to practice to be heard against the preamble; (3) the petition discloses no ground which according to practice entitles the petitioners to be heard against the bill.

Jeune, Q.C. (for petitioners): We desire to be allowed to go before the Committee to ask that the company shall be required to insert in this bill, which is principally a bill for widening the promoters' railway, what certainly has been inserted in a great many bills, namely, a provision that till the railway company comes to be assessed on the property put up in the place of the property which they may demolish, and which property will not yield rates during the time of construction, that is to say, in the present case, for five years, the railway company should make good the rates as if the houses had not been pulled down. The loss of rateable value will be £7,000 or £8,000 in respect of property within the limits of deviation, but if under the powers of clause 14 of the bill they take the whole of certain properties described in that clause for additional purposes, which will mean the demolition of the houses on the land, it will raise the value to £10,000, the total rateable value of the parish being £220,000. In the *Metropolitan and Metropolitan District Railway Companies Bill*, 1879 (2 Clifford and Rickards, 200), on the petition of *St. Dunstan's*, the rateable value represented by the property

demolished was £12,000 to £15,000, and various Acts were quoted during the arguments on the case, in which the provision we ask for had been invested. In the Charing Cross Railway Act, 1864, which authorised this railway, which it is now proposed to widen, there was an exactly similar clause.

The CHAIRMAN: The first question is whether the figure is a substantial one. Do the promoters say the amount is not a substantial one?

Worsley-Taylor (for promoters): Yes, that is the main point. I think the principle is settled by the case cited, subject to subsequent decisions of Parliament, because the petitioners say such clauses are to be found in almost all the Metropolitan railway bills.

The CHAIRMAN: What is meant is that wherever there has been a substantial disturbance of rating, you may expect to find such clauses.

Worsley-Taylor: I shall ask to be heard upon that, but I should like some information from the vestry clerk as to the figures given, because now by the provisions inserted in the other House our power of demolishing property has been very much cut down.

Mr. CHANDOS-LEIGH: The promoters say the bill was considerably altered in the House of Lords, therefore the amount of rateable value, which would have been taken for the works as originally proposed, is much greater than at present.

Jeune: I do not know to what the promoters refer. I take the bill as it stands. There is no alteration in the limits of deviation. What they will do no one can say.

Worsley-Taylor: As the Court goes into questions of substance on the question of amount, I ask them to go into the question of real substance as to this point, and not to be bound by any technical rule that they are to take the bill as originally deposited, but to take the bill as introduced into this House.

The CHAIRMAN: Though the widening is restricted to fifteen feet as described, yet if the promoters take part of a house or premises for the purpose of that widening, they may, under the 92nd section of the Lands Clauses Act, have to take the whole, though they may not require it.

[The vestry clerk, Mr. Henry Langton, was called, and his evidence showed that the estimated total loss to the rates, judging from the current rates at 2s. in the £, would be £800 a year.]

The CHAIRMAN: The promoters must show us that they can reduce this £8,000 or £10,000 materially, because, *prima facie*, it is a substantial figure.

Worsley-Taylor (in reply): I submit that, looking at the total rateable value of £220,000, and remembering this, that it is merely those rates that are not covered by sect. 133 of the Lands Clauses Act, the loss of these particular rates is not such a matter as the petitioners should be heard upon, especially as the uniform decisions of Parliament in the metropolitan area during the last 12 years has been to refuse such a clause as is now asked for.

The CHAIRMAN: We cannot go into what Committees have been in the habit of deciding after a *locus standi* has been granted; with that we have no concern, we are merely concerned with the right to be heard.

Worsley-Taylor: The petitioners include certain lands which we take power to acquire and use for general purposes of our undertaking. No doubt we might clear off the houses on it, but the bill says nothing about that, and anybody else might do the same, and when once we get possession we shall not be in a different position from the present owners.

Mr. HEALY: You only take the lands for railway purposes, such as to extend your stations or make approaches, and that would involve the demolition of house property. You do not take lands for the purpose of making an investment in real estate.

The CHAIRMAN: The *Locus Standi* is Allowed against clauses 4 and 14, authorising the taking of lands for widenings and additional purposes, and so much of the preamble as relates thereto.

Agent for Petitioner, *Ball*.

Agents for Bill, *Cooper & Sons*.

SOUTH YORKSHIRE JUNCTION RAILWAY BILL.

Petition of THE NORTH - EASTERN RAILWAY COMPANY.

20th June, 1890.—(Before Mr. PARKER, M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. HEALY, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Competition—Construction of Short Railway by Independent Company—Working Agreement Authorised—Petition of Company Forming Link in Chain of Through Communication.

The bill authorised the construction of a short railway from an important colliery to form a junction with the Hull, Barnsley

and West Riding Junction railway, power being given to the promoters to make working agreements with that company. The petitioners' railway received coal coming from the same colliery from the Manchester, Sheffield, and Lincolnshire railway company and conveyed it to Hull, and they complained that a new competition with this route, five-sixths of which consisted of their own railway, would be created by the bill. The promoters contended that the bill would only improve existing competition; that the petitioners, not being at the colliery in question, were not the parties to be heard, but the Sheffield company, whose *locus standi* was admitted, and that inasmuch as the route by the railways of the Sheffield company and the petitioners was considerably shorter and more convenient, the competition apprehended by them could not be of a serious character:

Held, however, that the petitioners were entitled to be heard on the ground of competition.

The *locus standi* of the petitioners was objected to on the following grounds: (1) it is not alleged in the petition, nor is it the fact, that the bill contains any provision for taking or using any lands or property of the petitioners, or for running engines or carriages upon or across any railway of theirs; (2) the petitioners have no such rights or interest in the portions of railways over which running powers are sought by the bill as to entitle them to be heard against the same; (3) the petitioners are not entitled, according to the practice of Parliament, to be heard against the provisions of the bill, authorising the promoters to enter into agreements with other companies, except in so far as it is proposed to authorise agreements with the petitioners; (4) no such competition with, or diversion of traffic from the railways of the petitioners will, or can be, created under the powers of the bill, as to entitle them, according to practice, to be heard against the same; (5) except as stated in the third paragraph of the notice, the petition discloses no grounds upon which, according to practice, the petitioners are entitled to be heard against the bill.

Bidder, Q.C. (for petitioners): The bill empowers the promoters, who will be nominally an independent company, to construct

among others a line from Denaby main to a junction with the Hull, Barnsley and West Riding Junction railway at Wrangbrook, and to enter into working agreements with the Hull and Barnsley and the Great Eastern railway companies. We claim to be heard on the ground of competition. The object of the proposed line is to give a new route in connection with the Hull and Barnsley from Denaby main, where there is a large output of coal, to Hull, its port of shipment. At present this coal is carried by the Manchester, Sheffield and Lincolnshire company from Denaby main to Doncaster, where it is handed over to the North-Eastern railway company and carried by them to Hull. This proposed line introduces entirely new competition. I am not aware of any decision that says that one of two partners in a route shall be heard, and that the other has not a right to be heard. By the present composite route from Denaby main to Hull is 48 miles, of which 40 miles is North-Eastern, so we are the owners of five-sixths of the route, and yet the *locus standi* of the Sheffield company is allowed, and ours disputed. By the new line the distance is 56 miles, but that is not of much consequence in mineral traffic, and by the Manchester, Sheffield and Lincolnshire, and the Hull and Barnsley, 65 miles. The promoters would go to a different dock from the one we go to at Hull, but that does not matter, for the ships go where the coal is coming, and practically the whole of the traffic goes by our line.

Pembroke Stephens, Q.C. (for promoters): The petitioners' mode of access to Hull is not the only one for traffic; there are three other ways by which it can go. Their route does not get to the same point in Hull as ours, and they are dependent on the Sheffield railway company, whose *locus standi* is admitted, for the traffic, which they get, reaching them at all, and the question is, are the North-Eastern also entitled to be heard as part of the joint route, not being themselves in the Denaby main district. Does the fact that the petitioners form part of a through route give them such an interest as entitles them to be heard, when the proposed railway does not spring out of their line, does not touch their line, and is some miles from it? A *locus standi* on this ground was refused in the *Hull, Barnsley, &c., Railway and Dock, &c., Bill*, 1882, (3 Clifford & Rickards, 170); also in the case of the *Alcester and Stratford-on-Avon Railway Bill*, 1871, (2 Clifford & Stephens, 128); and in the *Taff Vale Railway Bill*, 1885 (Rickards & Michael, 78).

Bidder: In that case the petitioners' route was simply a theoretical one: they had never carried any coals by it.

The CHAIRMAN: If you did not get the traffic from Denaby, now carried by the North-Eastern, would your line pay?

Stephens: The evidence in the other House proved that money sufficient to make the line pay could be obtained from the output of the new pits which are being sunk by the Denaby Main colliery not upon the existing line, but at a point that would be served by the proposed line.

Bidder: The ordinary practice is that when a new pit is sunk, the railway already serving the district make a colliery branch to it.

The CHAIRMAN: Here is an important traffic, and those to whom it belongs, the owners of the colliery are apparently promoting this new line. That certainly to my mind creates a new competition.

Sir GEORGE RUSSELL: The Sheffield company, whose *locus* you admit, will suffer about a sixth of the injury, the petitioners suffering the remaining five-sixths. A line 300 miles away might be equally affected with a line 300 yards away from a proposed line. And yet, if weight is to be given to your argument with regard to the distance of the petitioners from the proposed railway, the line 300 yards away might be entitled to a *locus standi*, but the line 300 miles away would not.

Stephens: It is, of course, a question of degree, and is in the discretion of the Court. At any rate the petitioners should only be heard against the construction of this railway.

Bidder: I will undertake not to discuss the question of the southern branch.

The CHAIRMAN: The *Locus Standi* of the Petitioners is *Allowed*.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Sherwood & Co.

TOTTENHAM AND FOREST GATE JUNCTION RAILWAY BILL.

Petition of (1) OWNERS, LESSEES, AND OCCUPIERS ALONG THE LINE OF THE PROPOSED RAILWAY.

18th March, 1890.—(Before Mr. PARKER, M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. SHIRESS WILL, Q.C., M.P.; Mr. COMPTON, M.P.; and The Hon. CHANDOS-LEIGH, Q.C.)

Practice—Compulsory Powers of Purchase of Petitioners' Property—Sufficiency of Allegations of Petition as to Injury.

The petitioners were owners, &c., of property along the line of railway authorised

by the bill, and they alleged in their petition that the bill contained a schedule which included their properties, as to which the promoters were by clause 27 of the bill to be exempted from the obligation, imposed by sect. 92 of the Lands Clauses Consolidation Act, 1845, to take the whole of such properties, and the petition was headed "The humble petition of the undersigned owners, &c., of property on the line of the proposed railways." The promoters objected that the petition contained no allegation that the properties of the petitioners were within the limits of deviation, and no allegation of specific injury:

Held, that this was unnecessary in the case of owners, and that the form of the petition was sufficient.

The *locus standi* of the petitioners was objected to on the following grounds: (1) it does not appear from the petition that any of the petitioners are owners, lessees or occupiers of any lands or premises which may be taken compulsorily under the powers of the bill. It does not appear that they claim to represent or that they adequately represent the inhabitants of any district alleged to be injuriously affected by the bill. The petition does not disclose any ground upon which, according to the practice of Parliament, petitioners are entitled to be heard upon their petition against the bill; (2) it does not appear from the petition in what districts the petitioners reside, but the local authorities of the various districts through which the railway is intended to pass are petitioners against the bill, and it is believed that all the petitioners are represented by them; (3) the petition does not allege or disclose any right or interest or any ground of objection, which, according to the practice of Parliament, entitles the petitioners to be heard against the bill.

Pember, Q.C. (for petitioners): The bill is for the extension of a line known as the Tottenham and Hampstead line, which passes through a highly populous district in the north-east of London; we allege in the heading that we are owners, lessees and occupiers of property on the line of the proposed railways, and notices have been served upon us as such.

Mr. SHIRESS WILL: If the property of any of these petitioners lies within the limits of deviation, and may be affected by clause 27 of

the bill, I should think there could not be any successful resistance to their *locus standi*. This being a landowners' *locus standi* which is claimed, there can be no distinction between owners, lessees and occupiers.

The *Hon. A. Lyttelton* (for promoters): There is no allegation that the petitioners are within the limits of deviation, and there is no such distinct statement of specific injury as would entitle the petitioners to be heard.

Mr. SHIRESS WILL: It is not necessary to say that the property is within the limits of deviation, if you say the property will be affected by the bill.

Pember: We say in our petition "That, by clause 27 of the bill, it is proposed with respect to the properties mentioned in the first schedule of the bill, and notwithstanding anything contained in sect. 92 of the Lands Clauses Consolidation Act, 1845, that the company shall not, under the conditions mentioned in that clause, be required or compellable to take the whole of those properties, many of which belong to one or other of your petitioners, and your petitioners object thereto."

The CHAIRMAN: The title of the petition, "The humble petition of the undersigned owners, lessees and occupiers of property on the line of the proposed railways," is, I think, quite sufficient.

The *Locus Standi* is Allowed.

Agents for Petitioners, Rees & Frere.

Petition of (2) INHABITANTS OF LEYTON, WANSTEAD AND WEST HAM.

Railway — Inhabitants of Districts Alleging Injurious Affecting — Claim to represent Inhabitants generally — Authority to do so not Alleged in Petition — Sufficiency of Numbers of Petitioners — Representation by Local Authorities also Petitioning — S.O. 134 [Municipal Authorities and Inhabitants of Towns] — Meaning of word "District."

The petition was headed "The humble petition of the undersigned inhabitants of the district comprising the parishes of Low Leyton, Wanstead and West Ham, in the county of Essex," and alleged that the district of which the petitioners were inhabitants, would be injuriously affected by the bill, and that some of them were owners, lessees, or occupiers of property in

the immediate vicinity of a viaduct proposed to be constructed under the bill, and that its construction would seriously prejudice the value of their property. The petition did not allege that the petitioners had been authorised to represent the inhabitants of the district at any public meeting, but such was now stated to be the fact. The signatures to the petition were 950 in number, and the total population of the three districts of which the petitioners were inhabitants was 270,000. The petitioners, however, claimed to be heard, not to represent the whole of these districts, but that portion of them which would be immediately affected by the construction of the railways authorised by the bill, in which sense they contended that the word "district" must, in the case of large centres of population, be taken to be used in S. O. 134. The opposite construction was contended for on behalf of the promoters, and numerous cases were referred to on both sides, and it was pointed out that the case of the petitioners, some of whom had also signed the petition of (1) owners, &c., would be adequately placed before the Committee by the local authorities of their districts, who were petitioning, and whose *locus standi* was not disputed:

Held, that although it was the practice of the Court in some cases to allow inhabitants as well as the local authority of a district to be heard, the petitioners were not sufficiently representative, and were in this case represented by their local authorities; and that their *locus standi* must accordingly be disallowed.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petitioners do not allege in their petition that they are owners, lessees or occupiers of any land which may be taken compulsorily for the purposes of the bill, and they appear to base their right to be heard on the 3rd paragraph of the petition, alleging that the district of which they are inhabitants will be injuriously affected by the bill; but it does not appear that at any meeting or otherwise the petitioners were authorised to represent the inhabitants of any district, and they do not constitute such a proportion of the

inhabitants of the district as would entitle them to be heard on behalf of the inhabitants ; (2) it is not alleged in the petition, nor is it the fact that the petitioners have any such interest in the subject-matter of the bill as entitles them to be heard on their petition against it ; (3) in so far as the petitioners claim to represent the district of Leyton, they are represented by the local board for the district of Leyton. In so far as they claim to represent the borough of West Ham, the petitioners are represented by the mayor, aldermen and burgesses of that borough. In so far as they claim to represent the parish of Wanstead they are represented by the vestry of that parish, and each of those three bodies are petitioners against the bill ; (4) the petition does not allege or disclose any right or interest or any ground of objection, which, according to the practice of Parliament, entitles the petitioners to be heard against the bill.

Pember, Q.C. (for petitioners) : This is a petition of inhabitants of the district comprising the parishes of Leyton, Wanstead and West Ham, but practically it is a petition of the district affected by the bill, that is to say, those portions of the three parishes through which the railway passes. We allege that we are inhabitants of the district, and that it will be injuriously affected by the bill, and that some of the petitioners are owners, lessees or occupiers of lands and houses in the immediate vicinity of the proposed viaduct, and it is not necessary for us to allege that our lands may be taken compulsorily for the bill. This is a question of injuriously affecting, and we represent a very large proportion of the district really affected, the petitioners numbering 950 persons. There is no necessity to allege in the petition that at any public meeting the petitioners were authorised to represent the inhabitants of any district. That is a question of fact, and was so decided to be in the *Lancaster Corporation Bill*, 1888 (Rickards & Michael, 210), when the overseers of the poor and the surveyor of highways signed a petition, and it was shown afterwards by evidence that they had been authorised to sign on behalf of the inhabitants and ratepayers. That was held to be a proper representation of the inhabitants.

The Hon. A. Lyttelton (for promoters) : We admit the 950 signatures, but do not admit that they sign in a representative capacity.

Pember : I can prove that this petition was signed in consequence of a resolution at a very large meeting properly convened, and it would have been enough if one or two delegates, instead of 950 persons, had signed. I cite first the case of the *Liverpool Tramways Bill*, 1868 (1 Clifford & Stephens, 142).

Mr. SHIRESS WILL : S. O. 134 gives us power to allow a *locus standi* either to the local authority or the inhabitants.

The CHAIRMAN : And it also says "inhabitants of any town or district." I do not know of any authority for giving a technical meaning to the word "district."

Mr. CHANDOS-LEIGH : There is the case of the *Cobham Railway Bill*, 1870 (2 Clifford and Stephens, 57).

The CHAIRMAN : "District" must not be construed too widely. In the Liverpool case there seems to have been a tendency to argue that the "district" was Liverpool. On the other hand, I do not know of any precedent where such a narrow meaning has been given to the word as to make it apply only to the precise portion of a district injured by the railway.

Pember : The local districts into which London is divided are of very large extent, and there are many points upon which their interests are not in common. There are many considerations which might lead a local authority of a very large district like West Ham to approve of a railway, though the railway itself might be absolutely contrary to the interests of the people in the district lying along the line, and it would be very hard if they should not be heard if they had separate interests. The case of the *Grand Junction Canal Bill*, 1879 (2 Clifford & Rickards, 166), shows that "district" is not merely used in the technical sense of the district of some local authority, but that it means "neighbourhood." It has been decided over and over again that for these purposes there is no representation of people by their local board: their interests may even clash.

Mr. SHIRESS WILL : If the local authority necessarily represent the inhabitants, the Standing Order would not give the power in the alternative, and frequently the inhabitants have been heard even though the local authority appeared.

The CHAIRMAN : The question to my mind is, may it be a district, *ad hoc* as it were ; may it be the district which is immediately contiguous to the viaduct ?

Pember : If it were not so, injustice would be done in a large city like London. The effect of a viaduct or railway over the tops of houses would be very important indeed to the inhabitants for a quarter of a mile or less on each side of it, but it would be a matter of absolute indifference to people half a mile off, the local authority might say we will not interfere, because in numbers you are an unimportant section, or because the railway, though it might hurt people in its immediate vicinity,

will do good to the district at large. The case is analagous to that of a special class of shareholders in a company.

Mr. SHIRESS WILL: My opinion is that "district" means "neighbourhood."

Pember: The petitioners have a special grievance of their own, and I submit that in the exercise of your discretion, you should construe for this purpose "district" as "neighbourhood." The *locus standi* of a Mr. Ryder, who was not a frontager, was allowed against the *London Tramways (Extensions) Bill*, 1889 (Rickards & Michael, 268). We are the inhabitants of a neighbourhood really affected by this bill; we have had our meeting; we have authorised the petition, and nearly a thousand of us have signed it.

The CHAIRMAN: This case raises a double question, first, whether we are to take "district" in that which may be called the narrow sense, and the further question whether, taking "district" in that narrow sense, the individual petitioners are in the vicinity of the proposed line.

Pember: I can prove that if necessary. There is no doubt upon that score.

Lyttelton (in reply): The population of the three parishes comprised in the district is 270,000, and the petitioners do not quite number one thousand.

Sir GEORGE RUSSELL: The question is whether the petition is fairly representative.

The CHAIRMAN: The promoters say that the petitioners have described themselves as inhabitants not of the limited district affected, but of the district comprising certain parishes or local board districts, and they go on to say "that the district, of which your petitioners are inhabitants" (which presumably is the same large district) "will be injuriously affected."

Lyttelton: I submit that as a matter of practice it is necessary to allege that the inhabitants in public meeting assembled have appointed the signatories, and that they represent the body of the inhabitants, and in this case it was especially necessary to make such an allegation as the three local boards representative of this district allege and are prepared to prove precisely the allegations which these persons put forward here, and it would be a great saving of expense and time that there should not be an unnecessary duplication of petitioners. The case cited of the *Lancaster Corporation Bill* was clearly distinguishable from this, for where the overseers and surveyor of highways sign a petition they may be regarded as representative of the vestry, and, therefore, as representative of

the body of inhabitants; in the other case cited, viz., the *Liverpool Tramways Bill*, the petitioners were 13,679 in number.

Mr. SHIRESS WILL: The local authorities could call these very gentlemen as witnesses.

The CHAIRMAN: When representative bodies appear we have recognised that they do not always represent every interest, because it might well be the interest of the local board to acquiesce in certain concessions and then retire.

Lyttelton: Yes; if this was a *bonâ fide* separate petition of these gentlemen seriously apprehending that they were not going to be represented by their local board, they might have signed the petition of owners, lessees and occupiers. The two petitions have the names of the same parliamentary agents at the back of them. It is, of course, in the discretion of the Court to allow both inhabitants and local authorities to be heard if any reason is shown, but there is nothing here to show that the interests of these gentlemen will not be represented by the local board. I cite the case of the *Liverpool Improvement Bill*, 1867, on the petition of Owners, Lessees and Occupiers (1 Clifford & Stephens, 48). In the present case there is no specific statement that the houses of the petitioners are actually taken or used, nor is there even a specific statement of the distance which these owners, lessees or occupiers are from the proposed line, but merely the words "immediate vicinity," and I submit that is much too vague an allegation for a *locus standi*. The case of the *Cobham Railway Bill*, referred to by Mr. Chandos-Leigh, is very like the present. The petitioners do not represent the body of the inhabitants, and the proper persons to represent the contentions put forward are the local boards who petition, and the owners, lessees, and occupiers to whom you have already given a *locus standi*.

The CHAIRMAN: I do not think the inhabitants as such have a strong claim to be heard as regards rates, and the unfitness of the railway to serve the district. The only question is about those of the petitioners who stand in a special relation to the proposed viaduct, and how many of those there are does not appear.

Rees, parliamentary agent (for petitioners): I can call evidence as to that.

Mr. SHIRESS WILL: The promoters say there is a population of 270,000, and assuming this to include women and children, if you divide this by five for heads of families, that would give a total population of heads of families of 54,000, and this petition is signed by 950, so that apparently the petition is signed by about one out of 60.

Lyttelton: That is taking the signatures as being all *bonâ fide*; but the petition shows that there are duplicate or triplicate signatures.

Mr. SHIRESS WILL: All such are rejected under the Standing Order.

The CHAIRMAN: We are of opinion that these petitioners who petition as inhabitants are not sufficiently representative, and they are represented by the local authorities who petition, and therefore the *Locus Standi* is *Disallowed*.

Agents for Petitioners, *Rees & Frere*.

Agents for Bill, *Dyson & Co*.

WORCESTER AND BROOM RAILWAY (EXTENSION OF TIME) BILL.

Petition of THE STRATFORD-ON-AVON, TOWCESTER AND MIDLAND JUNCTION RAILWAY COMPANY.

13th March, 1890.—(Before Mr. PARKER, M.P., Chairman; Mr. COMPTON, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

*Extension of Time for Construction of Railway—
Petition of Railway Company Interested in
Guarantee to Promoters—Claim to be Heard to
Obtain Clause to Interpret Existing Act.*

The bill extended the time for the compulsory purchase of lands and the completion of the Worcester and Broom railway. The petitioners were creditors and mortgagees in possession of the undertaking of the East and West Junction railway company, who were joint guarantors with another company for the payment of a dividend on the share and loan capital of the Worcester and Broom company.

The payment of the guarantee was provided for by sect. 63 of the Worcester and Broom Railway Act, 1885, and sect. 64 of the same Act preserved the "rights, priorities and privileges, statutory and otherwise," of the petitioners, who had, under the powers of an Act obtained by them in 1883, expended considerable sums of money upon the repair and equipment of the East and West Junction railway. They claimed to be heard (1) because the bill, by extending the time for the construction of the promoters' railway, would keep alive the guarantee by the East and West Junction railway company, which would, if the Worcester and Broom railway was not constructed, become inoperative, and that therefore the bill would have the effect of deferring the payment by that company of their debt to the petitioners; (2) in order to obtain the insertion of a clause in the bill to interpret sects. 63 and 64 of the Worcester and Broom Railway Act, 1885, as to the construction of which they entertained doubts. The promoters objected that the petitioners could not, according to practice, be heard upon an extension of time bill to re-open the question of the guarantee, which had been previously adjudicated upon by Parliament, or to obtain the insertion of an interpretation clause as to a matter which was not even mentioned in the bill. Upon these facts the Court held that the *Locus Standi* of the Petitioners must be *Disallowed*.

Whiteway appeared for the Petitioners; *Worsley-Taylor* for the Bill.

[The facts of the case were of a peculiar and intricate character, and rendered it of little value as a precedent.]

Agents for Petitioners, *W. & W. M. Bell*.

Agents for Bill, *Martin & Leslie*.

COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1891.

[H.L.] *added to the name of a Bill implies that the Bill originated in the House of Lords.*

* * *Where a Standing Order is quoted or referred to, the number is that of the Standing Orders for the Session 1892.*

AIRE AND CALDER AND RIVER DUN NAVIGATIONS JUNCTION CANAL BILL. [H.L.]

Petition of OWNERS AND MASTERS OF RIVER CRAFT FLYING ON THE RIVERS HUMBER AND TRENT AND THE SHEFFIELD AND SOUTH YORKSHIRE NAVIGATION, COMMONLY CALLED THE SHEFFIELD AND KEADBY CANAL, BETWEEN HULL AND SHEFFIELD AND INTERMEDIATE PLACES ON THE SAID RIVERS AND NAVIGATION, AND THE AMALGAMATED SOCIETY OF LIGHTERMEN AND WATERMEN OF THE RIVER HUMBER.

4th June, 1891.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONEHAM-CARTER.)

Construction of Canal forming Junction between existing Canals—Barge-owners on one Canal apprehending Introduction of Larger Vessels—Competition and obstruction of Navigation by Compartment Boats—Canal already open to Larger Vessels—Provisions in Bill relating to Bye-laws as to Navigation—Appeal to Board of Trade.

The bill empowered the undertakers of the Aire and Calder Navigation to construct a short canal, which would form a junction between the Aire and Calder and the River Dun Navigations. The petitioners were owners and masters of keels, or barges, using the River Dun Navigation, and they complained that the effect of the bill would be to introduce on the River Dun Navigation the trains of compartment boats used upon the Aire and Calder Navigation, the introduction of which would not only ruin them as owners of keels by means

of competition, but would so crowd and obstruct the Dun Navigation as to make it dangerous to their keels. They asked to be heard to obtain the insertion in the bill of clauses for their protection. They had petitioned in the House of Lords, where they had, after argument, obtained a *locus standi*, and had procured the insertion of a clause (57) in the bill requiring the promoters to publish all bye-laws in certain local newspapers two months before submitting them for approval to the Board of Trade, and they admitted that it would be competent for them to oppose the confirmation of the bye-laws by the Board; but they contended that they were entitled to ask Parliament for further protection in case the result of the bill should be to ruin their trade. On behalf of the promoters it was pointed out that not only had the petitioners the protection afforded them by clause 57 of the bill, but that clause 55 provided for the making of bye-laws for regulating the size and description of vessels using the proposed canal, their speed and the number of boats that might be towed in one train, and "for preventing damage or injury to any vessel or goods using the new canal;" and further that both the Aire and Calder and River Dun Navigations were at the present time open to the use of compartment boats, and that the present proprietors of the River Dun Navigation were by statute (Sheffield and South Yorkshire Navigation Act, 1889) under an obligation to provide facilities for the use of compartment boats on their canal, and could as carriers

themselves employ them at the present time :

Held, that under these circumstances the petitioners were not entitled to be heard to ask for further protection than that already afforded them by the provisions of the bill relating to bye-laws.

The *locus standi* of the petitioners was objected to on the following grounds: (1) no land or other property of which the petitioners are owners, lessees, or occupiers, is proposed to be taken or interfered with by the bill; (2) the petition does not show, nor is it a fact, that the interests of the Amalgamated Society of Lightermen and Watermen of the River Humber are affected by the bill so as to entitle the society to be heard; (3) the other petitioners allege that they are traders on the rivers and canals mentioned in the petition, but a great number of them do not trade on the Sheffield and South Yorkshire Canal system, and the petitioners have no authority to sign on behalf of the other traders. The petition therefore is not sufficiently signed to entitle the petitioners to be heard as representing the river craft trade on that canal system; (4) the bill will not interfere with the continued use by any of the petitioners of the rivers and canals upon which they now trade, and it will not place any existing route or canal system (not already belonging to them) under the control of the undertakers of the Aire and Calder navigation (hereinafter called the undertakers); (5) the bill will not give to the Sheffield and South Yorkshire navigation company (hereinafter called the navigation company) or to the undertakers any advantages or monopoly over any of the petitioners or other owners of vessels either upon the proposed new canal (which will be open to the use of the public on payment of the tolls) or upon any of the existing adjacent navigations or otherwise affect the interests of any of the petitioners so as to entitle them to be heard; (6) the bill does not confer on the navigation company or the undertakers any powers to introduce or adopt upon either the new canal or the existing adjacent navigations any special system of carriage of coal or other goods, or confer upon them any new powers of acting as carriers on such existing navigations; (7) both the navigation company and the undertakers at present have power to act as carriers and to use compartment boats upon their own and adjacent navigations (including the canals and navigations upon which

the petitioners now trade) and the petitioners are not entitled to be heard in reference to the exercise by such company or undertakers of their existing powers either upon the present canals or the proposed new canal, or in reference to the control to which such company or undertakers shall be subject in the exercise of such powers; (8) the petitioners do not represent the existing water route between Hull and Sheffield (*viâ* the Keadby and Sheffield canal system), or the traffic thereof, so as to entitle them to be heard against any anticipated injury to such route, or any diversion of traffic, *viâ* Goole. The owners of such canal system are the proper parties to be heard in respect thereof, and they are petitioning against the bill. The new route to Goole will be available for the traffic of the petitioners, but they will be under no compulsion to use such route; (9) the bill does not authorise the Navigation company, nor do they intend, to neglect or abandon their powers or duties, as regards the lower portion of the existing route between Hull and Sheffield, *viâ* Keadby, which will continue for the use of traffic desiring to pass by that route. Even if otherwise, they are under no legal obligation to the petitioners to improve that route; (10) the allegations contained in paragraphs 13 and 14 of the petition, so far as not before referred to, are unfounded or irrelevant, and are not such as to entitle the petitioners to be heard; (11) the interests of the petitioners (if any) in the bill are too remote to entitle them to be heard; (12) the petition does not disclose that the petitioners have any such interests affected by the bill, or that any facts or reasons exist which, according to the practice of Parliament, would entitle the petitioners to be heard against the bill, or any of the clauses or provisions thereof.

Silvester (for petitioners): The bill is entitled "A bill to authorise the undertakers of the navigation of the River Aire and Calder, in the West Riding of the County of York, to make a new canal from the River Dun navigation to join the Knottingly and Goole canal," that canal forming a continuation and part of the Aire and Calder navigation; "and to widen a portion of the last-mentioned canal; to provide for the Sheffield and South Yorkshire Navigation company becoming joint owners of the new canal, and for other purposes." The Dun Navigation (otherwise called the Sheffield and Keadby canal), between which, and the Aire and Calder Navigation, the canal proposed by the bill will form a junction, is in the hands of the Sheffield and South Yorkshire Navigation company. The petitioners are representatives of owners of keels and traders on

the Sheffield and Keadby canal. The undertakers of the Aire and Calder Navigation, who are carriers as well as canal owners, use what are called "compartment boats," consisting of a train of 30 or 40 iron boats, by which they carry coal; and if the trains are introduced, as the bill enables them to be, on the Sheffield and Keadby canal, our traffic cannot continue to exist, not only because of the competition, but because there will not be room for our keels, and the petitioners will lose their means of livelihood and so be injuriously affected. The material paragraphs in the petition are 7, 8, 9 and 15.

Mr. HEALY: Do your boats which trade on the Sheffield and Keadby canal at present use the Aire and Calder Navigation?

Silvester: No doubt it is open to us to use it, but we cannot do so, because there is not room for us, and when we have attempted to do so our keels have got knocked about so that we could not continue to use it.

Mr. SHIRESS WILL: How are you hurt by this bill?

Silvester: We are owners of certain boats called keels, which are the boats used on the Sheffield and Keadby canal at this moment. The Aire and Calder undertakers, who are also to be the undertakers of the proposed junction canal, are also carriers, and will by means of this junction come on to our present route with their trains of compartment boats, 30 or 40 in a line, and block the existing route as far as we are concerned and render our boats absolutely useless.

The CHAIRMAN: Are you asking that this junction should not be made at all, and that if it is made then that these trains should be kept off your canal?

Silvester: Yes, we want protection, and a provision in the bill that if their compartment boats are to come on the existing route there shall be certain rules as to navigation and steering.

The CHAIRMAN: There is a great difference between the two demands; it is one thing to ask that the connection of the canals should not be made at all, and another thing to ask for fair protection.

Silvester: If we use a public highway which is going to be interfered with, we ought to be heard to ask for protection. In the House of Lords our *locus standi* was objected to and was allowed, and we obtained the insertion of clause 56 in the bill, which provides that "All bye-laws proposed by the undertakers under the provisions aforesaid shall, two months at least before being submitted for the approval of the Board of Trade, be published in the *London*

Gazette and a newspaper published at Sheffield, Goole and Hull respectively."

The CHAIRMAN: So it comes to this, that you can go to the Board of Trade upon their bye-laws, of which you are to have timely notice, and object to their being passed.

Silvester: That may be so, but the Aire and Calder undertakers are themselves carriers, and bye-laws that would suit them would not necessarily give us all the protection that we should want.

Mr. HEALY: Are the owners of the Sheffield and Keadby canal carriers?

Pember, Q.C. (for promoters): Yes; and not only does the Sheffield and South Yorkshire Navigation Act, 1889, which transferred to the Sheffield and South Yorkshire Navigation company the Sheffield and Keadby canal, or River Dun Navigation as it is otherwise called, empower them to be carriers, but by sect. 84 it enjoins them in the interest of the trade to adapt their navigation and to provide sidings and other facilities for these very compartment boats on the Sheffield and Keadby canal. This grievance is one which Parliament has already subjected the petitioners to by that Act in 1889, when it handed over the Sheffield and Keadby canal, which had previously been in the hands of the Manchester, Sheffield and Lincolnshire railway company to the Sheffield and South Yorkshire Navigation company.

Mr. CHANDOS-LEIGH: These bye-laws have to be submitted to the Board of Trade, and the Board of Trade will regulate the traffic.

Silvester: The question is whether the petitioners are not entitled to be heard to get that protection which would ensure their livelihood not being taken away.

The CHAIRMAN: You got a certain amount of protection in the House of Lords. What more protection do you now want?

Silvester: We want further protection against these trains.

Mr. HEALY: Can you get it in any other way than by bye-laws?

Silvester: Yes; we want a special clause in the bill as to steering. I agree that as far as the bill is concerned I may not make out a *locus standi*, but the question is whether I am not entitled to a *locus standi* to ask for clauses for further protection.

The CHAIRMAN: Paragraph 11 seems to be the point of the petition. Why cannot you get sufficient protection by bye-laws?

Silvester: The Aire and Calder being the undertakers make the bye-laws, and they are the people who prosecute for any breach of them.

The CHAIRMAN: You have a clause requiring them to give notice when they go for their

bye-laws, and you would be heard before the Board of Trade.

Silvester: Suppose there was a breach of the bye-laws, the Aire and Calder undertakers would prosecute for the breach. They could not prosecute themselves, though they would enforce the bye-laws against us.

Mr. HEALY: Are there clauses in this bill enabling the Aire and Calder to carry on the Sheffield and Keadby canal?

Pember: Anybody has power to carry on the Sheffield and Keadby canal, and the Aire and Calder undertakers may do so now.

Mr. CHANDOS-LEIGH: Is there not to be a joint ownership of the canal by the Aire and Calder and the Sheffield and South Yorkshire?

Pember: Yes; there may be. The Aire and Calder have nothing now to do with the Sheffield and Keadby canal.

The *CHAIRMAN*: The petitioners say in paragraph 11 that no provision is contained in the bill whereby they can prosecute. Suppose any damage was done to one of your keels, could not you prosecute?

Silvester: Yes; we could bring an action.

The *CHAIRMAN*: Cannot you prosecute for any breach of a bye-law?

Pember: Yes; anybody can sue under clause 57 of the bill, which provides that "Any person who offends against any bye-law made in pursuance of this Act shall be liable for every offence to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings for every day such offence shall continue after conviction therefor, and such penalties shall be in addition to such damages as may be recoverable from any loss, damage, or injury consequent on such offence."

The *CHAIRMAN*: Is not that an answer?

Silvester: I think not. The bye-laws would be made by the Aire and Calder undertakers for their own protection.

Pember: No, for the protection of everybody.

Mr. SHIRESS WILL: The grievance seems to be this: the petitioners own a number of boats on the existing navigation, and they fear if these compartment boats are brought upon the same navigation there will be less room for them to navigate their craft.

Silvester: We say there will be no room at all. If there is one train of boats going one way and another train of boats going the other way you cannot navigate a keel, and we are entitled not to have our keels interfered with.

Mr. SHIRESS WILL: You are not entitled to any monopoly of the navigation.

Mr. HEALY: My difficulty is that this is only a bill to make a junction; the power to use compartment boats is under an existing Act.

Silvester: Another point we raise is that there is not room at the present time at Goole for the traffic, and there certainly will not be with the increased traffic when this junction is made.

Pember (in reply): Clause 55 of the bill provides for the nature of the protection that these small boats would have, and is as follows:—

"The undertakers may from time to time make, alter and repeal such bye-laws as they think fit for all or any of the following purposes (that is to say):

"For regulating the use of the new canal and of the locks, wharves, landing-places, towing-paths, and other works thereof;

"For regulating the size and description of vessels which may use the new canal and the mode of propelling the same;

"For regulating the rate of speed at which vessels may proceed along the new canal and the mode of navigating such vessels;

"For regulating the towing of vessels on the new canal and the number of vessels which may be towed in one train;

"For regulating the use of steam towage on the new canal;

"For regulating the gauging, weighing, measuring, and marking of vessels using the new canal;

"For regulating the duties and powers of the lock-keepers, store-keepers, and other officers and servants employed on the new canal;

"For regulating the passage of vessels through and along the locks, aqueducts, bridges, and other works of the new canal;

"For regulating the times and manner of paying and the places for payment of the tolls payable in respect of the new canal;

"For regulating the conduct and behaviour of boatmen, watermen, drivers, and other persons employed upon the new canal;

"For regulating the times and manner of opening and closing bridges whereby any road is carried over the new canal and for regulating the passage of vessels through such bridges;

"For preventing obstruction to the new canal and damage or injury thereto or to any vessel or goods using the new canal;

"For preventing or regulating bathing, fishing, or other sporting in or on the new canal;

"For regulating the use of the cranes, weighing machines, and other machinery and apparatus of the undertakers."

I call special attention to these words, "for preventing obstruction to the new canal and damage or injury thereto or to any vessel or goods using the new canal."

The *CHAIRMAN*: The petitioners say these undertakers are rivals in trade with us, and

they would naturally make bye-laws to suit themselves.

Pember: The bye-laws are to be proposed by the undertakers and then they are to be published in the *London Gazette* and the local newspapers, and after two months to be submitted to the Board of Trade for approval.

The CHAIRMAN: Can any one who objects to the bye-laws as being partial and one-sided go before the Board of Trade?

Pember: Yes; on these two highways—the Aire and Calder and the Sheffield and Keadby canals—everybody has a right to carry. At present, the Aire and Calder undertakers can and do carry by these compartment boats on their own canals, and they will do so on the proposed canal; at present the Sheffield and South Yorkshire, who are the authority on the canal now used by petitioners, have also the power to carry by compartment boats on their canal. What the petitioners object to is this change in the carriage of traffic by these compartment boats, and this they should have objected to, if at all, in 1889 when this power was conferred.

The CHAIRMAN: The *Locus Standi* must be Disallowed.

Agents for Petitioners, *W. & W. M. Bell*.

Agents for Bill, *Grahames, Currey & Spens*.

BURRY PORT AND GWENDREATH VALLEY RAILWAY BILL. [H.L.]

Petition of (1) THE LOCAL BOARD OF HEALTH FOR THE DISTRICT OF THE BOROUGH OF LLANELLY; (2) THE LLANELLY HARBOUR AND BURRY NAVIGATION COMMISSIONERS; AND (3) THE GREAT WESTERN RAILWAY COMPANY.

4th June, 1891.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Construction of Junction Railway—Working Agreements—Competing Harbours—Harbour Commissioners apprehending Diminution of Tolls—Local Board as Mortgagors of District Rate as collateral Security for Harbour Revenues—S. O. 134 (Municipal Authorities and Inhabitants of Towns)—Representation—Distinct Interests—Railway Company as Dock Owners—Competition and Diversion of Traffic.

The bill authorised the construction of a short railway to form a connection between the

Llanelly and Mynydd Mawr railway and the eastern end of an authorised railway, which would, when constructed, form a junction at its western end with the existing railway of the promoters, the whole forming a continuous railway in the hands of the promoters between Burry Port on the west and the Llanelly and Mynydd Mawr railway on the east. The bill also empowered the promoters and the Llanelly and Mynydd Mawr railway company to make working and other agreements. The Llanelly and Mynydd Mawr railway at present could only carry minerals from the colliery district to the north of Llanelly to Burry Port by sending it over a line belonging to the Great Western railway company, to which company it was hostile, and at present minerals from the colliery district in question were taken by the Llanelly and Mynydd Mawr railway down to Llanelly harbour, with the exception of a small amount which was forwarded to Swansea for shipment. The petitioners (1) and (2) were respectively the Llanelly Harbour Commissioners and the Llanelly local board of health, the former of which bodies had, under powers conferred upon them by the Llanelly Harbour Act, 1878, borrowed a considerable sum of money on the security (1) of the harbour revenues, (2) of the income of certain public estates belonging to the Llanelly local board of health, the charge upon which income had been subsequently transferred by the Llanelly Local Board Act, 1888, to the general district rate of the Llanelly district. Both these petitioners alleged that the effect of the bill would be to divert mineral traffic at present shipped at Llanelly to Burry Port, which would result in a diminution of the revenues of Llanelly harbour. The promoters contended (1) that the construction of the proposed railway would not result in any diversion of traffic from Llanelly harbour to Burry Port, being only intended to accommodate traffic which could not, from the character of the quays and docks there at present,

be accommodated at Llanelly, and was therefore carried for shipment to Swansea ; (2) that in any case the Llanelly local board of health, who had voluntarily pledged their rates as collateral security for the harbour revenues, could not be heard in addition to the Harbour Commissioners :

Held, however, that the competition between the two harbours, which would probably result from the construction of the proposed railway and the working agreements authorised by the bill, was such as to entitle the Harbour Commissioners to be heard ; and that the existing charge upon the general district rate of the Llanelly local board gave them such a distinct interest as to entitle them also to be heard upon their petition.

The petition of (3) the Great Western railway company alleged that the bill would create a competition between the docks at Burry Port and a dock at Llanelly, of which they were the owners :

Held, that they were entitled to be heard against the bill on the ground of competition.

The *locus standi* of the petitioners (1) was objected to on the following grounds : (1) the petitioners do not allege in their petition, nor is it a fact, that any lands, houses or other property belonging to the petitioners will be taken or interfered with under the powers of the bill ; (2) the fact that the petitioners have, as the local board of health for the district of the borough of Llanelly the local management of such district, does not give them a right to be heard on their petition. Neither the petitioners nor the inhabitants of the said district will, in fact, be injuriously affected by the provisions of the bill ; (3) the interests of the petitioners in the undertaking of the Llanelly Harbour and Burry Navigation Commissioners are wholly represented by such Commissioners, whether the said Commissioners are or are not entitled to be heard on the petition which they have presented against the bill, and no apprehension of injurious affection of, or of competition with, or of diversion of traffic from, the harbour and landing stages of the said Commissioners to result from the passing of the bill, and no charging of the said Commissioners debt upon

the public estate of the petitioners or upon the general district rate of their district gives the petitioners a right to be heard on their petition ; (4) even if the petitioners have an interest in the said undertaking of the said Commissioners so separate and distinct from the interests of these Commissioners as to prevent such Commissioners fully representing the petitioners, the bill will not enable the promoters to compete with, or divert traffic from, the harbour and landing-stages of the said Commissioners in such a manner or to such an extent as to give the petitioners a right to be heard on their petition ; (5) the fact that the promoters by the bill do not seek power to construct a railway from Pwll to Sandy Gate but only seek power to take tolls thereon, and that that railway shall be deemed part of the promoters' undertaking does not, and the allegation of the petitioners that such railway is not an authorised railway assuming such allegation to be in fact true, which it is not, does not give the petitioners a right to be heard on their petition ; (6) the financial position of the promoters and their power, or want of power, to raise capital, do not give the petitioners a right to be heard on their petition ; (7) the petitioners do not allege any ground in their petition, nor have they any interest which entitles them to be heard on their petition against any of the provisions of the bill, consistently with the ordinary rules and practice of the House of Commons.

The *locus standi* of the petitioners (2) was objected to on the following grounds : (1) the petitioners do not allege in their petition, nor is it a fact that any lands, houses or other property belonging to them, will be taken or interfered with under the powers of the bill ; (2) the bill will not enable the promoters to compete with or divert traffic from the petitioners' harbour or shipping stages in such a manner, or to such an extent, as to give the petitioner a right to be heard in their petition. The petitioners will not, in fact, be injuriously affected by the provisions of the bill ; (3) the fact that the promoters by the bill do not seek power to construct a railway from Pwll to Sandy Gate, but only seek power to take tolls thereon, and that that railway shall be deemed part of the promoters' undertaking, does not, and the allegation of the petitioners that such railway is not an authorised railway, assuming such allegation to be in fact true, which it is not, does not give the petitioners a right to be heard on their petition ; (4) the financial position of the promoters and their power, or want of power to raise capital, do not give the petitioners a right to be heard on their petition ;

(5) the petitioners do not allege any ground in their petition, nor have they any interest which entitles them to be heard on their petition, against any of the provisions of the bill consistently with the ordinary rules and practice of the House of Commons.

The *locus standi* of the petitioners (3) was objected to on the following grounds: (1) the petitioners do not allege in their petition, nor is it the fact, that any lands, houses or other property belonging to the petitioners will be taken or interfered with under the powers of the bill; (2) the bill will not enable the promoters to compete with or divert traffic from the petitioners' railway or docks or shipping places, in such a manner or to such an extent as to give the petitioners a right to be heard on their petition; (3) the bill does not seek powers for the promoters to acquire land for making a railway from Pwll to Sandy Gate, or to make such railways. If the promoters have not such land, or have not powers to make such railway, the petitioners cannot be affected by the bill, and have no right to be heard upon their petition with reference to whether the promoters have or have not the said land and power. If the promoters have the said land and power to make such railway, the petitioners have no right to be heard upon their petition with reference to the promoters having such land and powers; (4) the bill contains no provisions giving the petitioners a right, nor have they otherwise any right to be heard upon their petition with reference to the financial condition of the promoters or their ability to construct a railway from Pwll to Sandy Gate or the proposed railway; (5) the bill contains no provisions affecting or enabling the promoters and any other persons, bodies or companies, or any of them, to do anything which would affect the agreement between the petitioners and the Llanelly and Mynydd Mawr railway company in the petition mentioned, or entitling the petitioners to be heard upon their petition with reference to any effect which the petitioners allege the passing of the bill might have upon such agreement; (6) the bill contains no provisions giving the petitioners a right, nor have they otherwise any right to be heard upon their petition with reference to the engineering of or the necessity in the interests of the public for the proposed railway, or the grant to the promoters and the Llanelly and Mynydd Mawr railway company of powers of entering into agreements; (7) the petitioners do not allege any ground in their petition, nor have they any interest which entitles them to be heard on their peti-

tion, against any of the provisions of the bill consistently with the ordinary rules and practice of the House of Commons.

Rickards (for (1) the local board of health, &c., of Llanelly): The line proposed to be authorised by the bill is a short link that will connect the existing Llanelly and Mynydd Mawr railway with the Pwll and Sandygate railway, and thereby will give the Llanelly and Mynydd Mawr railway an access to Bury Port, in which we are interested. The bill authorises the making of a junction between the existing working system of the Llanelly company, which runs down to Llanelly harbour and docks, and the Pwll and Sandy Gate, which was authorised as far back as 1812, and which if made would form a connection with another railway to Bury Port. The position therefore is this: the bill authorises a junction in the hands of the Llanelly company, enabling them to carry traffic from their existing lines, which they cannot do at present, to Bury Port, and it enables the promoters—the Bury dock and Gwendreath Valley company—to make working and other agreements with the Llanelly company. The petition in paragraphs 4, 5 and 6 shows the peculiar position that the local board are in with regard to the charge upon their general district rate, and states that: "Your petitioners are duly constituted, and acting by law as the local board of health for the district of the borough of Llanelly, and as such local board have the local management of the district, and your petitioners allege that they and the inhabitants of the district will be injuriously affected by the bill, and they object thereto. By the Llanelly Harbour Act, 1878, the Llanelly Harbour and Bury Navigation Commissioners obtained powers for the purpose of paying off the sums of money then owing by them, to borrow, with the consent of your petitioners, £50,000, and to charge the repayment thereof upon the harbour revenues, and as collateral security upon the income of the public estates belonging to your petitioners. Subsequently, by the Llanelly Local Board Act, 1888, your petitioners were granted power to charge the repayment of such borrowed money upon the general district rate of their district, not exceeding in any one year 6d. in the pound upon the assessable value of that rate. The Commissioners have, with the consent of your petitioners, raised the greater portion of the said sum upon the security of the harbour revenues, and the collateral security of the income of the public estates of and the general district rate levied by your petitioners."

Mr. CHANDOS-LEIGH: I suppose your apprehension is that the revenues of the harbour would be diminished by this short line by diverting traffic?

Rickards: Yes; the greater the deficiency in the harbour revenue, the greater is the burden thrown upon our rate.

The CHAIRMAN: There are two petitions, one from the local board and one from the Llanelly Harbour and Burry Navigation Commissioners.

Rickards: Yes. With regard to competition and diversion the two petitions are at one; but we have a distinct interest from the Harbour and Navigation Commissioners.

The CHAIRMAN: Do any of the local board sit on the harbour board?

Baggallay (for promoters): Yes, the local board have a considerable majority on the harbour board, 16 or 18 out of 26.

Rickards: The interests of the two bodies are distinct.

Mr. SHIRESS WILL: The public estates do not belong to the harbour board.

Rickards: The preamble of the Llanelly Local Board Act, 1888, recites: "Whereas by the Llanelly Harbour Act, 1878 (in this Act called 'the Harbour Act'), the Llanelly Harbour and Burry Navigation Commissioners were authorised, with the consent of the local board and for the purposes in that Act mentioned, to borrow sums not exceeding in the whole the sum of £50,000 upon the security of the harbour revenues, and by way of collateral security to charge the same upon the income of the public estates" (*i.e.*, those of the petitioners), "and provision was made that in case the harbour revenues should prove insufficient for the payment of any sum due by way of interest or principal borrowed under the authority of that Act, such sum should be deemed to be and should be well charged on the income of the public estates subject to any charges affecting the same respectively and then subsisting, and should be paid out of the same. And provision was made that in case the funds in the hands of the Commissioners from the harbour revenues should be at any time insufficient for the repayment of any moneys borrowed by the Commissioners with the consent of the local board under the authority of the Act, or for the payment of any interest on any moneys so borrowed, the local board should pay to the order of the Commissioners any sum or sums demanded as in that Act mentioned by the Commissioners out of the surplus income of the public estates for the time being in the hands of the local board, and out of the accruing income of the public estates. Provided that if by reason of any such payment

the income of the public estates should be insufficient for the payment of any principal, moneys and interest thereon, which had been borrowed by the local board under the authority of the Water Act for the water works purposes, and which should be secured upon the public estates, the local board should make good such deficiency out of the rates, rents and charges for water and the water-rate by the Water Act authorised, and in case the same should be insufficient, then out of the general district rates, as the case might be, so that the total net income of the public estates might, if required, be available for payment of all principal moneys and interest thereon borrowed under the authority of the Harbour Act and for the time being charged upon the income of the public estates, and it was enacted that the lands and hereditaments contained within the limits set forth in Part II. of Schedule A to that Act should constitute the district of the local board and the order of 1850 and the order of 1866 should be respectively construed throughout as if from and after the confirmation of the same respectively the limits of the district of the local board thereby respectively fixed had been therein respectively described as the same were respectively described in Part I. and Part II. of the Schedule A; and whereas it is expedient that the trusts affecting the public estates be so varied that the local board be empowered to sell such estates or any part or parts thereof freed from the trusts mentioned in the Public Estates Act and from all charges upon the same created under or by the Public Estates Act, the Water Act, and the Harbour Act, or any of them, the proceeds of any such sale or the investments representing such proceeds being held and applied by the local board as in this Act provided; and whereas it is expedient that the local board should no longer be required to make and levy a water rate; and whereas it is expedient that the local board be empowered at the request of the Commissioners, to charge as limited by this Act, the general district rate, by way of further collateral security, for the repayment of moneys borrowed by the Commissioners, under the powers of the Harbour Act;" and sect. 16 enacts that, "In addition to the powers for securing the repayment of moneys borrowed by the Commissioners, under the authority of the Harbour Act, with interest, conferred by that Act, the local board may, if they think fit, in consideration of moneys lent to the Commissioners, under that Act or this Act, from time to time, by way of further collateral security, for the repayment of such moneys,

with interest, charge the repayment of such moneys, with interest, upon the general district rates, provided that the aggregate amount which may, in any one year, become payable in respect of any charge or charges thereby created, shall not exceed the amount which might, in such year, be produced by a general district rate of sixpence in the pound on the assessable value of property assessable to the general district rate."

The CHAIRMAN: You say that that establishes a distinct interest.

Rickards: Yes. Then the petitioners further say in paragraph 7:—"If the bill be passed into a law, the proposed railways, when constructed, will cause a considerable portion of the traffic which is now carried by the Llanelly and Mynydd Mawr railway, and shipped at the docks and harbour of the said Commissioners, to be diverted to Bury Port, and will thus deprive the Commissioners of the tolls and dues which they are now entitled to charge on imports to and exports from their docks and harbour." And in paragraph 8, they say that "Your petitioners and the ratepayers and inhabitants would be seriously affected by the diminution of the harbour revenues, upon which security the money borrowed by the Commissioners was charged, and would result in your petitioners being compelled to increase the general district rate levied by them to meet the deficiency in the harbour revenues."

The CHAIRMAN: Whatever amount has been raised by the Harbour Commissioners, interest has had to be paid upon it. Has that interest been met by the revenues of the harbour, or have you had to make up part of it?

Rickards: We have had to meet the interest out of the revenues of our estates, but not at present out of our rates.

Mr. CHANDOS-LEIGH: When the Harbour Commissioners raised the money, they virtually raised it on a double security, and you say that the effect of the competition that will be created by a diversion of traffic to Bury Port will be to diminish the tolls, and make you liable for the deficiency.

Rickards: Yes; we assisted the Harbour Commissioners by mortgaging part of our public estates.

The CHAIRMAN: How will what is proposed by this bill create a new competition?

Rickards: The traffic at present comes straight down from the north, from the mineral district to the port of Llanelly. Along the coast there is the Great Western railway, which runs to Pembrey, where there is a junction and a short railway down to Bury Port, but the Llanelly company have no power to run

over that railway which is hostile to them. At the port of Llanelly the Harbour Commissioners have power to levy ordinary dues, buoyage dues, light dues, and harbour dues.

Mr. SHIRESS WILL: Your case is that £50,000 was borrowed with your consent by the Harbour Commissioners, and it was charged first upon the harbour dues and secondly on your public estates and public rates. At present the traffic coming from this valley finds its way to Llanelly harbour, and if that traffic is diverted the harbour revenues will be diminished and therefore your security will be come upon the sooner.

Mr. CHANDOS-LEIGH: Did the Harbour Commissioners petition in the House of Lords?

Rickards: No; the reason we did not appear in the House of Lords was that the Harbour Commissioners had determined to petition, and at a public meeting the promoters represented that it was only intended to ship at Bury Port the coal which came down by the Llanelly company, and was shipped at Swansea, a port 12 miles from Llanelly, and thereupon the ratepayers determined not to oppose. When the bill was before the House of Lords, it became evident that it was intended to divert coal from Llanelly to Bury Port, and the ratepayers at once determined, by a majority of 2 to 1, to oppose the bill. The first objection to our *locus standi* is, that we do not represent the ratepayers.

Mr. SHIRESS WILL: You need not argue that.

Rickards: The second objection is, that we are represented by the Harbour Commissioners that our interest is distinct.

The CHAIRMAN: You have established a separate interest.

Rickards: I wish to refer to the following cases, all decided on the same ground in favour of the petitioners:—*The Midland Railway Bill, 1882, on the petitions of the Stroud Water Navigation Company, the Conservators of the River Thames, the Severn Commissioners, and the Staffordshire and Worcestershire Canal Navigation Company* (3 Clifford & Rickards, 190); *The Freshwater, Yarmouth, and Newport Railway Bill, 1883, on the petitions of the Southampton Harbour Board and the Corporation of Southampton*, ib. 278; *The London and South-Western Railway (Various Powers) Bill, 1883, on the petitions of the Southampton Harbour Board and the Corporation of Southampton and others*, ib. 306; *The Swindon, Marlborough, and Andover Railway Bill, 1883, on the petition of the Corporation of Southampton*, ib. 354. As to distinct interests, I will refer to *The Upper Mersey Navigation Bill, 1876, on the petition of the Justices of the Peace of the County of Chester* (1 Clifford

and Rickards, 270); and *The South-Eastern Railway (Various Powers) Bill*, 1889, on the petition of the Trustees of the Royal Liver Friendly Society (Rickards & Michael, 301). We say our interests are distinct, and our rates may be affected, and as the rating authority we are entitled, both as mortgagors of our tolls and under S. O. 134 as representing the inhabitants, to be heard generally against the bill.

Baggallay (in reply): The cases of the petitioners (2) and (3) are cases of competition, and if you should hold that there is such competition as would entitle the local board to be heard, supposing they have a separate interest, we should not fight the competition question upon the other cases. First, as regards the separate interest. Suppose instead of our getting the local authority to give the security of their rates, we had gone to a private individual, with a limited interest, who could only give a limited charge for any money he borrowed on the security of his estate, and we wanted him to borrow money for us on the security of his estates, and he obtained leave from the Court to borrow in excess of what otherwise would have been his power to borrow having regard to his limited estate, that lender would not have had a *locus standi*. The mere fact of Parliament having given the local board power to pledge their rates in order to help somebody else to borrow money cheaply does not give them any *locus standi*.

The CHAIRMAN: Is not that rather contrary to precedents?

Baggallay: No; in all the *Southampton* cases, where the corporation was given a *locus standi*, the *Southampton* corporation were partners. So in the *Upper Mersey Navigation Bill* the justices of Chester were partners in the tolls.

Rickards: I am told we are interested in the tolls. We receive part of the surplus tolls.

The CHAIRMAN: Suppose a private person had agreed that his estate should be collateral security on the existing state of things, and it was proposed to change that existing state of things, would not he have a *locus standi*?

Baggallay: I think not.

Mr. HEALY: Suppose a private person is a mortgagee, would not such mortgagee have a *locus standi*?

Baggallay: I should have doubted it.

Mr. HEALY: Is there any difference between a mortgagee who is a public body, and a mortgagee who is a private individual?

Baggallay: No. These persons, because they happen to be a public body, ought not to have any greater rights than an individual would have.

Mr. HEALY: Are not the local board, though not really mortgagees interested in these tolls, exactly as if they were mortgagees? Will not their security be increased or diminished exactly as the tolls are diminished?

Baggallay: I should say they are interested, but it is a voluntary interest, which they took upon themselves.

Mr. HEALY: They took upon themselves a voluntary interest in one state of facts, and you come to alter that state of facts by statute.

Baggallay: What the local board have done is to back somebody else's bill.

The CHAIRMAN: Under the existing state of things, which you propose to alter.

Baggallay: As to the alleged competition, if there is any competition at all, it is not with Llanelly, but with Swansea. This bill is merely to authorise two railways to form a junction, which might, in certain cases, divert certain traffic. What happens now is that traffic, which cannot be accommodated at Llanelly harbour by reason of the size of the harbour and of the ships that can use the harbour, does to a considerable extent go to Swansea, and this is the traffic which would go to Burry Port.

The CHAIRMAN: Llanelly harbour is doing all it can to accommodate traffic. It cannot at present accommodate all, and it is proposed to make a junction that will take a part of the traffic not accommodated at present to a very convenient port. Is it not probable that the rest of the traffic will follow?

Baggallay: No; it will only interfere with traffic that would go to Swansea. If you give the petitioners a *locus standi* under S. O. 134 it should be limited to an opposition to the two chains forming the junction, but they cannot have a *locus standi* to go into the question whether we can make that other mile and a half between Pwll and Sandy Gate outside their district. They cannot be heard against it, if it is an authorised line, as there is no proposal to authorise it by this bill.

Mr. SHIRESS WILL: The chairman would keep them to what was relevant.

Baggallay: The petitioners also raise the question of finance, but they cannot go into that, for it is not material to them.

Mr. CHANDOS-LEIGH: You say that if they have a *locus standi* it should be limited?

Baggallay: Yes, to the construction of these two chains as injuriously affecting them by competition. There is nothing in the bill that authorises anything but the construction of the two chains. The bill does not authorise the raising of capital, but only by clause 15 the

application of capital already authorised to the construction of the two chains of railway.

Mr. SHIRESS WILL: If they have a *locus standi* at all to oppose you on preamble, they may use every weapon in their power which is relevant.

Baggallay: In the *South-Eastern Railway (New Lines and Widening) Bill*, 1882 (3 Clifford & Rickards, 213), where there were a number of local authorities opposing the South-Eastern proposal to construct new railways in certain parishes, you held that each of the parishes had a *locus standi* against so much of the railway as was within its own district, but not as regards the railway outside.

Mr. CHANDOS-LEIGH: This is a different case altogether. This is a case of diminution of income in consequence of apprehended diversion of traffic.

The CHAIRMAN: If we allow a *locus standi* to the local board, that carries with it the *locus standi* of the other two petitioners, does it not?

Baggallay: Yes; the question of competition is raised by all three petitioners.

Cripps, Q.C. (for petitioners (3)): Ours is a clear case of competition by diversion of traffic. The whole meaning of this bill is to take traffic from Mynydd Mawr to Burry Port which now goes by the Mynydd Mawr line to the Great Western docks at Llanelly. At present we have an agreement with the Mynydd Mawr company under which that traffic has to come over our line.

The CHAIRMAN: You are interested in Llanelly?

Cripps: Yes, we have a dock at Llanelly.

The CHAIRMAN: The *Locus Standi* of all the Petitioners is *Allowed*.

[*Worsley-Taylor*, Q.C. (for petitioners (2)), was not called upon.]

Agents for Petitioners (1), *Wyatt & Co.*

Agents for Petitioners (2), *Wyatt & Co.*

Agent for Petitioners (3), *Mains.*

Agents for Bill, *Speechly & Co.*

CALEDONIAN RAILWAY (ADDITIONAL POWERS) BILL.

Petition of THE NORTH BRITISH RAILWAY COMPANY.

16th April, 1891.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Practice—Petitioners served with Notice as Landowners—Absence from Petition of Allegation that Lands of Petitioners were taken under Bill—S. O. 133 [In what cases Railway Companies to be heard], Meaning of.

The allegations of the petition were directed against the repeal by clause 39 of the bill of certain sections in the Caledonian and Scottish Central Railways Amalgamation Act, 1865, and the Caledonian and Scottish North-Eastern Railways Amalgamation Act, 1866, which conferred certain facilities and powers upon the Great Northern and North-Eastern railway companies, called in those Acts the East Coast companies, and against the powers conferred upon the promoters of constructing railway No. 2 authorised by the bill, the latter powers being, the petition alleged, in breach of an agreement between the petitioners and the promoters, which was scheduled to and confirmed by the Edinburgh and Glasgow Extensions Act, 1864. It was, however, admitted in argument by counsel for the petitioners that the repeal of the section and of the Amalgamation Acts of 1865 and 1866 only concerned the East Coast companies, and that on further examination of the agreement scheduled to the Edinburgh and Glasgow Extensions Act, 1864, the allegation in the petition that the construction of Railway No. 2 of the bill was in breach of that agreement could not be sustained.

The petitioners further claimed a general *locus standi* as landowners, whose land was taken for the purposes of the bill, and who had received notice as landowners. They admitted the fact that the petition contained no allegation that their lands would be taken, but claimed that

the service of a landowner's notice upon them by the promoters was sufficient to cure that defect:

Held, however, that the Court was prevented by the total omission from the petition of any allegation that the petitioners' lands were taken from granting them a *locus standi* as landowners. (*Great Eastern Railway (Metropolitan Railways, &c.) Bill*, 1870, on the petition of James Harman, (2 Clifford & Stephens, 16) cited and distinguished.)

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege that the bill contains any provisions giving power to take land or other property of which the petitioners are owners, lessees or occupiers; (2) the petition does not allege that the bill contains nor does it in fact contain any provision repealing, altering or affecting the running powers or facilities conferred on the petitioners by the Amalgamation Acts referred to in the petition; (3) the allegations contained in the 3rd, 4th, 5th, 6th and 9th paragraphs of the petition are irrelevant, inasmuch as the provisions of the Amalgamation Acts referred to therein, so far as relating to the petitioners, and the petitioners' parliamentary status thereunder, are altogether unaffected by the bill; (4) the facilities and provisions proposed to be repealed by clause 39 of the bill are those conferred by the said Amalgamation Acts upon the North-Eastern and Great Northern railway companies, who are themselves petitioning against the bill, and are in those Acts referred to as the East Coast companies. The petitioners are not (as erroneously alleged in paragraph 7 of the petition) one of the East Coast companies referred to in those Acts, and they have no rights under or interest in such facilities and provisions to entitle them to be heard in respect of the proposed repeal thereof; (5) the allegations in paragraphs 12 and 13 of the petition referring to the agreement scheduled to the Edinburgh and Glasgow Railway (Extensions) Act, 1864, and to the Lanarkshire and Dumbartonshire line, are unfounded and wholly irrelevant. The said agreement has no bearing upon or relation to the promotion of railway No. 2 referred to in the petition. The reference to the Hamilton Hill branch is also irrelevant; (6) the petition does not allege that any injury will be caused to the petitioners or any competition will arise

from the construction of the said railway No. 2 or show any grounds which would entitle the petitioners to be heard in respect of the said proposed railway; (7) the petition does not disclose that the petitioners have any such interests affected by the bill, or that any facts or reasons exist which according to the practice of Parliament would entitle the petitioners to be heard against the bill or any of the clauses or provisions thereof.

Pope, Q.C. (for petitioners): Clause 39 of the bill enacts that the several facilities and powers (other than running powers) secured by the Caledonian and Scottish Central Railways Amalgamation Act, 1865, and the Caledonian and Scottish North-Eastern Railways Amalgamation Act, 1866, to the East coast companies shall cease, and that the sections in those Acts which provide for such facilities shall be repealed, and in our petition we object to such repeal; but on looking into the matter, I see that the Great Northern and the North-Eastern railway companies only are denominated in those Acts as the East coast companies, and therefore I concede that we are not entitled to be heard on that question. Then paragraph 12 of our petition is as follows: "By sect. 5 of the bill the Caledonian company also seek powers to construct a railway (No. 2) 1 mile 5 furlongs 3·5 chains, or thereabouts, in length, commencing by a junction with their railway, authorised by the Act of 1876, and therein called railway No. 1, and terminating by a junction with the Company's Glasgow Central railway (railway No. 6), authorised by the Central Act of 1888. Said railway No. 2 is contrary to and inconsistent with the terms of an agreement between the Caledonian railway company and your petitioners scheduled to the Edinburgh and Glasgow Extensions Act, 1864, and should not be sanctioned. No part of the railway authorised by the Act of 1876, and called the Hamilton Hill branch, and which was declared to be for the purpose of enabling that company to utilise their property alongside the Forth and Clyde canal, has yet been constructed." On looking, however, into that agreement I am bound in fairness to admit that that allegation is not borne out. Railway No. 2 of the bill, however, is the same as railway No. 4 of the *Lanarkshire and Dumbartonshire Bill* of this session, and against that bill we have an admitted *locus*, and that being so, the question is whether we are not entitled to be heard against its construction under the powers of this bill.

Pember, Q.C. (for promoters): The object of railway No. 2 in this bill is simply to complete

the circuit of the Caledonian railway round Glasgow, and apart from the other railways authorised by the *Lanarkshire and Dumbartonshire Railway Bill* could not be used as a link in the chain of extension of the Caledonian system to the north of Glasgow. If the *Lanarkshire and Dumbartonshire Bill* is rejected, railway No. 2 in this bill will be valueless for the purpose for which the petitioners apprehend it is intended.

The CHAIRMAN: I think that if the petitioners have a *locus standi* against this railway No. 2; as it stands in the *Lanarkshire and Dumbartonshire Bill*, as a portion of a competitive route, it leaves no ground for them to be heard against it in this bill as a portion of a route which, by itself, is not competitive.

Pope: Then I come to the last ground upon which I claim a *locus standi*, namely, as a landowner, whose land is taken for the purposes of railway No. 2, and who has received notice accordingly. It is in the discretion of the Court to allow me a general *locus standi* under S. O. 133, and I claim it, although there is no allegation in the petition that we are the owners of land which is taken under the compulsory powers of the bill. I contend, however, that that defect is cured by the fact of our having received notice as a landowner.

Mr. BONHAM-CARTER: In the case of the *Bridgwater Railway Bill*, 1886, on the petition of the *Great Western Railway Company* (Rickards and Michael, 89), an unlimited *locus standi* was granted, though only an easement was asked for.

Pember: But there was no defect in the petition there.

Mr. SHIRESS WILL: In the *Great Eastern Railway (Metropolitan Railways, &c.) Bill*, 1870, on the petition of *James Harman* (2 Clifford and Stephens, 16), the question arose how far a defect in the petition is cured by the petitioners proving that they have received the statutory notice, and the *locus standi* of the petitioner was allowed.

Pember: In that case there was an allegation that the petitioners' lands were affected though not absolutely to the effect that his lands were going to be taken, and you held that the allegation that his lands were going to be affected was equivalent to an allegation that his lands were going to be taken.

The CHAIRMAN: It was a general allegation, which might include the particular mode of affecting them by taking them. We have been in the habit of being content with somewhat general allegations in petitions, though it is desirable that they should be specific.

Mr. BONHAM-CARTER: Here there is no allegation at all.

Pember (in reply): Although it is true that railway No. 2 of the bill is railway No. 4 of the *Lanarkshire and Dumbartonshire Bill*, and for reasons I can explain is included in both bills, railway No. 2, if this bill alone were passed, would merely complete the circuit of the Caledonian railway round Glasgow, and would not form an extension of the Lanarkshire and Dumbartonshire railway against which the petitioners could appear.

The CHAIRMAN: There is the further question as to the position of the petitioners as landowners.

Pember: Do the petitioners say that if they succeed in obtaining an amendment of their petition that they are to have a landowner's *locus standi* under the "post case" (*London and North-Western Railway Bill*, 1868, 1 Clifford and Stephens, 62), and not only to appear against the making of this railway as a communication round Glasgow, but also to get back the *locus standi* which they gave up against the facility clauses?

Pope: No, clearly not.

Mr. SHIRESS WILL: I should like to be guided by the authorities, but it seems to me that S. O. 133 was not intended to detract from the rights of a railway company standing in the position of a landowner. The S. O. is very general in its terms. If you merely run into a station, of course you do not take the land of the company, and the S. O. was intended to say that in that case there should be a *locus standi*, but I think a limited one.

Pember: The meaning of S. O. 133 I take to be this, that if you interfere engineeringly, and only so, with a railway, such interference is not necessarily to give them the position of ordinary landowners against the bill, but gives the Court a discretion as to whether the *locus* shall be general or not. I say there is no allegation of landowning interest here. The *Thames Deep Water Dock Railway Bill*, 1882 (3 Clifford & Rickards, 232), is a case in point, and you did not give a *locus standi*.

Rickards (as *amicus curiæ*) mentioned the case of the *Lancaster Corporation Bill*, 1888, on the petition of the *Lancaster Waggon Company, Limited* (Rickards & Michael, 213).

Mr. CHANDOS-LEIGH: There is the case of the *Oxford and Groombridge Railway Bill*, 1883 (3 Clifford & Rickards, 325).

Pember: There is no allegation here that the promoters "would seriously interfere with the petitioners' authorised railway." There there was an allegation that the line was crossed

and that their property would be otherwise interfered with, and the Court said that there was an inference that their land must be taken, but there is nothing whatever in this petition to lead to such an inference. All the damage alleged in paragraph 12 is damage that might easily take place, if we did not cross their line at all, and so give them a peg to hang a claim for a landowner's *locus* upon.

Mr. CHANDOS-LEIGH: There is also the case of the *East and West Yorkshire Union Railway Bill*, 1886, on the petition of the *North-Eastern Railway Company* (Rickards & Michael, 98).

Pember: That was a different case, as the bill was for an extension of time, and we may assume that the petitioners had a *locus standi* against the original bill, so it was the carrying on of the right to appear against the original bill. The question of an imperfect petition did not arise there, but the question was whether you would extend the right of a railway company to be heard to that of an ordinary landowner. So again in the *Caledonian Railway (Tay Ferries, &c.) Bill*, 1870 (2 Clifford & Stephens, 37), no question was raised as to the petition being deficient, and the only question was whether the *locus standi* should be general or limited. The present is a case where neither under the Standing Orders nor as general landowners have the petitioners any *locus standi*, general or limited, because they have not alleged that they are landowners, and the case comes under the decision in the *Thames Deep Water Dock Railway Bill*, 1882, which decided that where people have not cared to go upon the point of their being landowners, or in any way pleaded it, but have elected to go upon something else, they cannot simply because their land is scheduled and they have received notice, claim a general *locus standi* as landowners.

Pope: The promoter's case is that, whatever the position of the petitioners is, they have not sufficiently alleged it.

Pember: I do not even say "sufficiently," for you have not mentioned it at all; you have not elected to go upon it. There is no allegation at all; it is not a question of the allegation being merely indistinct, and that being so I submit they are not entitled to even a limited *locus standi*.

The CHAIRMAN: The Court are agreed that the total omission of any allegations in the petition that the petitioners' lands are taken, prevents our giving them any *locus standi*. *Locus Standi Disallowed*.

Agents for Petitioners, *Sherwood & Co.*

Agents for Bill, *Grahames, Currey & Spens.*

4th June, 1891.—(*The Court consisted of the same Members as when the Bill came before it on the 16th April, 1891, supra.*)

Pope, Q.C. (for the North British railway company): When the petition of the North British railway company was before the Court it was stated that railway No. 2 in the bill, which also appeared in the *Lancashire and Dumbartonshire Bill*, was simply included in this bill by the promoters with a view to complete their Glasgow connection, and would have no result as regards the North British agreement for Stobcross traffic. That resulted from a misapprehension, and I, therefore, ask the Court to assent to a motion of the Chairman of Ways and Means that the petition might be referred back to this tribunal for rehearing, in order that if it should turn out that we were under a mistake and there is something that affects that agreement the question of *locus standi* should be reconsidered.

Pember, Q.C. (for promoters): I do not think I can oppose that, but we do not admit the mistake.

The CHAIRMAN: Will it be necessary when it comes back to take evidence of any facts?

Pope: It will only be a question of the deposited plans, which the engineer will explain.

Pember: A little evidence may be necessary.

The CHAIRMAN: The application is granted.

Agents for Petitioners, *Sherwood & Co.*

Agents for Bill, *Grahames, Currey & Spens.*

CENTRAL LONDON RAILWAY BILL.

26th February, 1891.—(*Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Pritt (parliamentary agent) stated that the petitioners, whose *locus standi* was objected to, had withdrawn their signatures from the petition.

Agents for Bill, *Sherwood & Co.*

EDINBURGH MUNICIPAL AND POLICE BILL.

Petition of (1) THE PAROCHIAL BOARD OF ST. CUTHBERT'S COMBINATION, EDINBURGH, AND ANDREW FERRIER, INSPECTOR OF POOR, FOR AND ON BEHALF OF THE SAID COMBINATION; AND (2) THE PAROCHIAL BOARD OF THE CITY PARISH OF EDINBURGH.

16th April, 1891.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Proposed Exemption of Public Buildings from Poor Rate—Scotch Parochial Boards claiming to Represent Ratepayers—Poor Law (Scotland) Act, 1845—Claim of Petitioners to be heard to Discuss Policy of Existing Exemptions—Complaint against Past Legislation.

Clause 78 (sub-sect. 3) of the bill amended sect. 70 of the Edinburgh Municipal and Police Act, 1879, so as to make certain public buildings in Edinburgh named in that section, which had been hitherto liable to assessment for poor-rate, exempt from it. The petitioners were the parochial boards for a parish and a combination of parishes situated partly within and partly without the boundaries of the city of Edinburgh, and they claimed to be heard against the bill on account of the additional burden that the exemption proposed by it would throw upon the ratepayers whom they represented. The constitution, powers, and duties of the petitioners were defined by the Poor Law (Scotland) Act, 1845, and included the raising by assessment and the expenditure and application of the sums required for poor relief, and sect. 17 of that Act provided that "the whole administration of the laws for the relief of the poor should be under the direction and control of such parochial board." The loss in rates to the petitioning parochial boards was admittedly small, but they argued that this did not affect their right to be heard against the principle of the proposed exemption. The petitioners further asked to be heard, in connection with the ex-

emption proposed by the bill, to argue before the Committee on the bill that certain exemptions from poor-rate of police buildings, &c., provided for by the Edinburgh Municipal and Police Acts, 1848 and 1879, should be reconsidered, and, if thought advisable, repealed. The promoters contended that the ratepayers of the parishes affected, or at any rate those of them whose property was within the municipal boundaries, were represented by the corporation of Edinburgh, who promoted the bill; and that in any case the petitioning parochial boards did not represent the ratepayers in respect of the payment of rates, their duties being executive and confined to raising and expending the amounts required for the relief of the poor; and that the proper parties to be heard in such cases were the ratepayers themselves:

Held, however, especially having regard to the provisions of the Poor Law (Scotland) Act, 1845, that the petitioners were the proper representatives of the ratepayers, and were entitled to be heard against clause 78 of the bill, but not to discuss before a Committee the provisions of the Edinburgh Municipal and Police Acts, 1848 and 1879.

The *locus standi* of the petitioners (1 and 2) was objected to on similar grounds, namely: (1) the petitioners do not allege in their petition, nor is it the fact that any lands or other property belonging to them, or in which they are interested, will be taken or interfered with under the powers of the bill; (2) the petitioners do not set forth in their petition, nor do they possess any interest to be heard on the amendment proposed by sub-sect. (3) of clause 78 of the bill, and they do not allege that they represent, nor is it the fact that they do represent, the ratepayers of Edinburgh, or the owners or occupiers of property in Edinburgh liable to be assessed for the relief of the poor; (3) petitioners (1) are not entitled to be heard on paragraphs 8 and 9 of their petition, nor petitioners (2) on paragraph 8 of their petition, inasmuch as the objection which the petitioners respectively raise in the said paragraphs is an objection to prior legislation, and, moreover, the subject of the objection is not

raised by or contained within the powers or provisions of the bill, nor does the bill impose any new obligations on the petitioners, and the petitioners have no interest and they are not entitled to be heard in support of the allegations of the said paragraphs; (4) the petitioners do not possess, and, at all events do not show by their petition that they possess, any interest intended to be affected by the bill, which entitles them according to the practice of Parliament to be heard against it.

Graham Murray (for petitioners (1)): The clause of the bill to which we object is subsect. 3 of clause 78, which enacts that sect. 70 of the Act of 1879, the last General and Municipal Act of the city of Edinburgh, shall be read as if the words "the said police-offices, station-houses, houses, and other buildings or grounds connected with the police establishment shall also continue to be exempted," last occurring therein were omitted therefrom. Sect. 70 of the Act of 1879 is as follows: "The burgh assessments shall not be imposed in respect of the Royal Palace of Holyrood," and a number of other public buildings, charitable institutions, hospitals, and public gardens, and grounds are exempted from the payment of such burgh assessments, "and the said police-offices, station-houses, houses, and other buildings connected with the police establishment shall also continue to be exempted from the payment of all cess or poor-rates imposed or to be imposed;" these police buildings and offices being by the section previously exempted from burgh assessments not common with other public buildings which were not, however, like the police buildings exempted from poor-rates. Now by striking out these words "the said police-offices, station-houses, houses, and other buildings or grounds connected with the police establishment, shall also continue to be exempted," they make the sentence read thus, that the Royal Palace of Holyrood, and the other buildings and grounds "shall be exempted from the payment of such assessments," i.e., burgh assessments, "and from the payment of all cess or poor-rates imposed, or to be imposed." These public buildings therefore will, by the bill, be exempted from poor-rates as much as from burgh assessments. The petitioners are the parochial board of St. Cuthbert's combination, and the inspector of poor, on behalf of that combination. In Scotland, under the Poor Law (Scotland) Act, 1845, it is lawful for certain parochial boards to make a combination, which must be sanctioned by the ruling central authority, the board of supervision. The combination of St.

Cuthbert's consists of the parish of St. Cuthbert's, and the parish of Canongate. The boundaries of the parish of St. Cuthbert's do not coincide with the boundaries of the city. It is what is called a landward burghal. There are, within the parish of St. Cuthbert's, persons who live within the city; others who live within the landward, and others who live within the burgh of Leith. The Poor Law Act provides that, whenever a combination is formed, it is to be divided into certain districts by the board of supervision; these districts are solely for voting purposes; the ratepayers within each district elect a representative; and as the assessment is levied—one-half upon occupiers, and the other half upon owners—both owners and occupiers elect these representatives, and then the total board is made up by four representatives sent from each Kirk Session in the combination. The parochial board of St. Cuthbert's combination is composed of 38 members altogether; 30 elected by ratepayers within the districts; 4 from the Kirk Sessions of St. Cuthbert's, and 4 from the Kirk Sessions of Canongate. The parochial board not only collects the rate, but also administers it, and the inspector is the person to see whether a person claiming relief is entitled to get it. The whole working of the poor law is done by the parochial board of the combination, and this bill proposes at once to take out of assessment property, within the City of Edinburgh, which, hitherto, has contributed to the poor rate. The present case is covered by that of the *Metropolitan, and Metropolitan District Railway Companies Bill, 1879, on the petition of the Committee for the Management of the Affairs of the Church and Parish of St. Dunstan's-in-the-East and Others* (2 Clifford and Rickards, 200). That was a case where the railway company proposed to take certain property within the parish, and were going to pull down houses, and the committee constructed under the Local Act, who were also the recipients of the rates, opposed the bill. It was held that they properly represented the ratepayers, and were entitled to a *locus standi* against the clauses. In that case, the petitioners merely collected the rate, but we not only collect it, but have also to see to the spending of it, and therefore ours is a stronger case.

Mr. SHIRESS WILL: *Prima facie* it seems rather an obvious case.

Mr. HEALY: Is the rating affected by the bill considerable?

Graham Murray: We estimate it at about £60 a year, the total rating being about £30,000 a year for poor purposes. We also raise the rate for the School Board. The promoters have

convened the inspector of the poor of St. Cuthbert's combination in the Court of Session to find out that upon a just construction of the Act of 1879 they are not subject to poor-rates, and being apprehensive that they will be beaten they come to Parliament, and endeavour to obtain a clause which will place the matter beyond doubt, and when we come to Parliament they say, you the St. Cuthbert board and the inspector are not entitled to be heard.

The CHAIRMAN: That conduct is not very consistent with this objection. They say you are objecting to prior legislation, but the fact is they are trying to get rid of prior legislation.

Graham Murray: In paragraph 5 of our petition we say, "The latter part of this section, which exempts ' police-offices, station-houses, and other buildings or grounds connected with the police establishment,' from payment of poor-rates, was inserted first in Edinburgh Police Act of 1848, and again in the bill for the Act of 1879 without any intimation to your petitioners, and without their knowledge; and as (so far as your petitioners are aware) there was no opposition thereto when these bills were under the consideration of Parliament, your petitioners fear that the effects of the said enactments were not fully appreciated. The Poor Law Acts recognise no exemption except on the ground of poverty, and your petitioners' powers of assessment thereunder have been materially affected by the limitation effected by the said provision," and in paragraphs 8 and 9 we ask to have this exemption from assessment to poor-rate repealed. We say that now they have introduced this matter of exemption, we should like to get the exemption they have already got reviewed, and that these exemptions would probably be taken away, and as they have raised this question as to whether public buildings are or are not to be exempt from poor-rates, bearing in mind that the general statute excepts no buildings at all, and nobody except on the ground of poverty, we submit, therefore, it is not fair that the Committee should not be able to go into the whole question of exemptions.

The CHAIRMAN: Your complaint against exemptions allowed by sect. 70 of the Act of 1879 would be against existing legislation.

Pollock (for petitioners (2)): We are another parochial board, and so far as the general facts go the circumstances of our case are identical with those in the former case, and we are affected in very much the same way, as by the bill buildings in our area which now pay rates will be exempt and the amount of rating affected will be about the same as in the former case. The cases in which a *locus standi*

has been given to a parish on the ground of interference with rateable value have been cases in which the rates have been lessened in value, but the promoters in this bill propose to take away the rates altogether on certain buildings.

Mr. CHANDOS-LEIGH: In the cases to which you refer we tried to ascertain what was the amount of diminution of rates.

Mr. SHIRESS WILL: Those were cases in which a railway company sought to clear away a number of houses; but subject to anything the promoters may have to argue I do not think the question of amount will influence us.

Pollock: In their objection (3) to our *locus standi*, the promoters object to paragraph 8 of the petition, in which we claim to raise the question of exemptions obtained under the Act of 1879. The promoters have already got certain exemptions, and they are proposing certain further exemptions by this bill. When the Committee come to consider the whole question they may possibly think that some of the exemptions conferred in the Act of 1879 should be struck out, and one or two of the exemptions now sought ought to be given, and they may wish to have the whole matter raised before them. If we are not given a *locus standi* upon this question it will prevent us raising that point before the Committee, and so tie their hands.

Mr. SHIRESS WILL: You must convince us that you are entitled to be heard against past legislation.

Pollock: It is past legislation, it is true, but at the time these exemptions were granted no notice was served upon us, and we were not heard; we were a party interested, but they did not serve us with any notice.

The CHAIRMAN: Can you refer us to any authority in favour of giving a *locus standi* against past legislation?

Pollock: This is a public question, and though I can refer to no precedent, I submit that in the exercise of your discretion you can allow us a *locus standi* to raise the question of repealing the exemption of the Act of 1879.

The CHAIRMAN: The promoters need not argue the question of the right of petitioners (1 and 2) to be heard against exemptions not in the bill.

Pember, Q.C. (for promoters): The question whether certain property shall be exempt from taxation or not is one for the ratepayers, and the corporation are the custodians of the interests of the ratepayers in Edinburgh as elsewhere. I admit that a ratepayer who can show that his interest differs from that of the

community at large may be heard against the seal of the corporation, but the corporation are the custodians of the interests of the ratepayers. It is for the ratepayers to sanction or not the proceeding of the corporation in introducing the bill; but when once the seal of the corporation has been affixed to a bill affecting the general interests of the ratepayers, no one can be heard against those general interests as represented by the corporation.

The CHAIRMAN: The petitioners are not individual ratepayers or even a large number of ratepayers, but an organised combination.

Pember: An organised combination for a definite purpose, but not to represent the substantial interests of the ratepayers; those are still left to be represented by the corporation, both poor rate-payers and burgh rate-payers.

The CHAIRMAN: The St. Cuthbert's combination represent a different district to that of the corporation of Edinburgh. Some of the petitioners are not in the city at all.

Pember: They are a mere board of assessment and distribution, and whether it is to the general interests of the ratepayers of Edinburgh that certain public properties should be exempted from assessment to the poor law is not a question for them, they occupy a mere ministerial capacity.

Mr. SHIRESS WILL: Whatever you call them, it is their duty to levy the assessment and to spend it.

Pember: Yes; and it does not matter to them, as an assessment and spending body, whether the money is raised by a two-shilling rate over a thousand acres, which contains public and private property, or whether it is raised by a heavier rate over a smaller area after excluding the site of public property. It does not matter to these assessors whether they levy £100,000 or £200,000.

The CHAIRMAN: They are not only assessors, but, in some degree, the representatives of the ratepayers.

Mr. CHANDOS-LEIGH: Are they not the guardians of the poor rate-payers within the district of the combination board?

Pember: No; they are the raisers and spenders of money, but it is not their own money, but that of the ratepayers, and they do not represent the ratepayers.

The CHAIRMAN: They are elected to represent the ratepayers.

Pember: But only for the purpose specified in the Act.

Mr. HEALY: Is it not the interest of every assessing body to levy a low rate?

Pember: No; only if they happen also to be the representatives of the pecuniary interest of

the body assessed. These people are rate-payers in Edinburgh, and represented by the corporation.

Graham Murray: That is not so; I represent people who are not in Edinburgh.

Pember: Then I cannot rate you at all.

Mr. HEALY: That is not the question. You increase the amount that a ratepayer outside Edinburgh has to pay by lessening the area over which taxes can be levied in Edinburgh.

The CHAIRMAN: I think that point exceedingly important, because here clearly the interest of Edinburgh is to exempt as many as they can of themselves, and they assess people outside Edinburgh.

Pember: Then persons outside might come and petition by themselves, it does not give this body a *locus standi*. By sect. 17 of the Poor Law (Scotland) Act, 1845, it is enacted that "In every burghal parish or combination of parishes, there shall be a parochial board of managers of the poor, and the whole administration of the law for the relief of the poor shall be under the direction and control of such parochial board, on whom shall devolve all the powers and authorities hitherto exercised by, or vested in, the magistrates of burghs, in that behalf, or any other body, or persons administering or entitled to administer the laws for the relief of the poor in any burgh or burghal parish." Then the section provides for the constitution and election of the board of such parish or combination: "The persons assessed for the support of the poor within the parish or combination shall elect in manner after-mentioned to be members of the parochial board, such number of managers not being more than thirty, as the said board of supervision having due regard to the population and other circumstances of every such parish or combination may from time to time fix, and possessing such qualification by the ownership or occupancy of lands and heritages of a certain annual value within the parish or combination, as the said board of supervision having due regard to the population and other circumstances may from time to time fix, such qualification being in no case fixed at a higher annual value than fifty pounds to be ascertained in manner hereinafter provided in regard to the qualification of voters, and the magistrates of the borough shall nominate four persons to be members of the parochial board, and the Kirk session of each parish shall nominate not exceeding four members of such Kirk session to be members of the parochial board;" and sect. 33 enacts that, "It shall be lawful for the parochial board of any parish or combination assembled at such meeting

or at any adjournment thereof, or for the parochial board of any parish or combination at any meeting of such board called for that purpose, and of which due notice shall have been given by letter advertisement or otherwise to all the persons entitled to attend, to resolve that the funds requisite for the relief of the poor persons entitled to relief from the parish or combination, including the expenses connected with the management and administration thereof shall be raised by assessment, and if the majority of such meeting shall resolve that the funds shall be raised by assessment such resolution shall be final, and shall be forthwith reported to the board of supervision, and it shall not be lawful to alter or to depart from such resolution without the consent and authority of the board of supervision previously had and obtained." I admit that if the result in the change of the law proposed in clause 78 of this bill is to make persons outside Edinburgh pay more than they otherwise would in the pound, be it large or small, they are entitled somehow to be heard, but not through their combination, because it is not the business of the combination to represent the pecuniary interest of their electors.

The CHAIRMAN: I do not see why not.

Pember: They do not represent the ratepayers of Edinburgh for any purpose except to levy certain rates and spend the money. The petitioners say in paragraph 7 (a) "it is contrary to public policy to limit by a local bill the statutory powers of assessment conferred upon petitioners by Act of Parliament." The bill does not limit their statutory powers, but what it does is to say on behalf of the whole of Edinburgh, of which they are a part, that certain amendments in this law as affecting the ratepayers of Edinburgh generally are worth having, and their interests are exactly the same as the general interests of the ratepayers.

The CHAIRMAN: It is quite conceivable that one part of Edinburgh has more of these buildings proposed to be exempted than another part, and the bill may be unfair to one part as against another. Why should not each part be heard for itself?

Pember: Ratepayers can only be heard against the seal of their corporation if they can show that they have a special interest apart from and hostile to the rest of the ratepayers; you have from time to time let them in.

Mr. CHANDOS-LEIGH: A certain body say here that in a particular district they have a special interest, and they appear by their representative body, the combination board.

Pember: No, they do not say that. If there had been a meeting of the ratepayers saying that the combination board or the parochial board should appear to represent their pecuniary interests, that would be a different matter, but the combination board have taken upon themselves to appear here and say they represent the ratepayers. If they were to say a change is going to be brought about which will interfere with our power of levying rates and spending the money and relieving the poor, that would be a perfectly different case.

The CHAIRMAN: It strikes me that in Scotland there never is a doubt as to these boards representing the ratepayers.

Mr. SHIRESS WILL: That is how the case strikes me.

Pember: They represent the ratepayers for certain definite statutory purposes; what they are claiming to do is to be the custodians of the purses of the ratepayers.

Mr. BONHAM-CARTER: Paragraph 7, subsect. (c), of the petition of the parochial board claims a distinct interest on the part of the ratepayers of the city parish as against the ratepayers of the whole municipality.

Pember: Yes; I do not say the petition contains an insufficient allegation of injury if this body represents the pecuniary interests of the ratepayers. The whole question is whether these bodies are the proper persons to allege it.

Mr. SHIRESS WILL: Why did you make them defenders to the action to which reference has been made?

Pember: Because they are the assessors, and we thought they were making a wrongful assessment, and we were therefore bound to treat them as the persons to be proceeded against; that does not show they represent the pecuniary interests of St. Cuthbert's.

The CHAIRMAN: I think they were necessarily made defenders in the action.

Pember: The case of *The Metropolitan Railways Bill* was different to this. There a railway company was coming to destroy a great amount of rateable property in a certain parish, and the representatives of the parish said we are going to suffer, and for this reason they were heard; whereas in the present case this is a proceeding by the municipal body, of whom these ratepayers are the constituents. If the petitioners were custodians of the purse and interests of the ratepayers I should concede that they are entitled to a *locus standi*; but that is what I deny.

The CHAIRMAN: As you admit that if these people were the proper representatives they should be heard, so you need not go into the cases.

MR. BONHAM-CARTER: Who do you say would represent the ratepayers in this particular parish if they had separate and distinct interests?

Pember: They must in such a case represent themselves in the same way as traders and freighters do; they could have a group of ratepayers, but they have not done this.

The CHAIRMAN: Here a change is going to be made in the statute law at the instance of private promoters and a parish whose ratepayers are going to be specially affected, and the promoters contend that the ratepayers should have called a meeting and shown that it was a sufficiently representative one. The Court is very much impressed by the exact wording of sect. 17 of the Act of 1845, the wording of which is very wide: "There shall be a parochial board of managers of the poor, and the whole administration of the laws for the relief of the poor shall be under the direction and control of such parochial board, on whom shall devolve all the powers and authorities hitherto exercised by or vested in the magistrates of burghs in that behalf or any other body or persons administering or entitled to administer the laws for the relief of the poor in any burgh or burghal parish."

Pember: That limits it to administration, and to defend the pecuniary interests of the ratepayers is not administration of the poor laws. I should say the same if this were an English board of guardians or overseers of the poor.

The CHAIRMAN: The *Locus Standi* of both Petitioners is *Disallowed*, except as regards the part of the bill in question, i.e., clause 78, and so much of the preamble as relates thereto. The chairman of the police and sanitary committee will be informed that the Court does not give any *locus standi* on the question of past legislation. Whether the Committee themselves have the power of going into the question is not for us to decide.

Locus Standi Allowed accordingly.

Agents for Petitioners (1), *Grahames, Currey and Spens*.

Agents for Petitioners (2), *Keeping & Glogg*.

Petition of (3) THE SCHOOL BOARD OF EDINBURGH.

Exemption of Public Buildings from Poor-Rate—School Board—Collection of School-Rate by Parochial Boards also Petitioning against Bill.

The school board of Edinburgh, whose district was co-extensive with that of the two

petitioning parochial boards (1 and 2) also petitioned against the bill on the same general ground as those boards, upon whom the school board served a precept for the amount of the school-rate required by them, and the rate was then collected by the parochial boards with the poor-rate, and handed over to the school board who applied it in payment of school expenses. The petitioners claimed to be heard (1) on account of loss of rateable value to their district, and (2) as owners of school buildings, upon which an additional poor-rate would be levied in consequence of the exemptions proposed by the bill, and whose value would be accordingly depreciated:

Held, however, that the petitioners were not entitled to be heard on ground (1) in addition to the parochial boards who represented the ratepayers of the same district; and that as to ground (2), apart from the question of whether the additional taxation apprehended by them was of sufficient amount to be taken into consideration in deciding the question of their *locus standi*, the petitioners had no separate interests from other owners of property.

The *locus standi* of the petitioners (3), was objected to on the following grounds: (1) the petitioners do not allege in their petition, nor is it the fact that any lands or other property belonging to them, or in which they are interested, will be taken or interfered with under the powers of the bill; (2) the petitioners do not set forth in their petition, nor do they possess any interest, entitling them to be heard against the bill; (3) the petitioners do not allege that they represent, nor is it the fact that they do represent, either the parochial board of the City Parish of Edinburgh, or the parochial board of St. Cuthbert's combination, Edinburgh, or the ratepayers of Edinburgh, or the owners or occupiers of property in Edinburgh, liable to be assessed for the relief of the poor, or for school-rate; (4) the petitioners do not allege that they possess any powers of assessment, nor do they, in fact, possess any such powers which will be interfered with by the bill; nor do they allege, and it is not the fact, that any rights, powers, jurisdictions, or functions of the petitioners are, or are proposed

to be, affected or interfered with by the bill; (5) the petitioners are not entitled to be heard on paragraphs 6 and 7 of their petition, inasmuch as the objection which the petitioners raise in the said paragraphs is an objection to prior legislation, and, moreover, the subject of the objection is not raised by or contained within the powers or provisions of the bill, nor does the bill impose any new obligations on the petitioners, and the petitioners have no interest and they are not entitled to be heard in support of the allegations of the said paragraphs; (6) the petitioners do not possess, and at all events do not show by their petition, that they possess any interest intended to be affected by the bill which entitles them, according to the practice of Parliament, to be heard against it.

Pembroke Stephens, Q.C. (for petitioners (3)) : The school board stands, to a great extent, upon the same footing as the parochial boards, who levy the school board rate, but have no interest in it, and are mere collectors of the money, and hand it over for administration by the school board. Our school district happens to coincide with that of the two petitioning parochial boards.

Mr. HEALY : It was argued that the parochial board did not represent the pecuniary interest of the ratepayers. How far is that the case with the school board ?

Pembroke Stephens : The promoters certainly do not represent us. If the rates had been burgh rates, it would have been a different matter.

Mr. HEALY : Is there any limit to the amount of the school board rate ?

Pembroke Stephens : No; but the effect is this: directly you take away a certain area of taxation, you must levy a higher rate on what remains, so the injury is the same as if they took so many acres off our taxing area.

Mr. HEALY : Do the parochial boards levy the school board rate separately? Is it called school board rate ?

Pembroke Stephens : Yes. The poor-rate is the basis of the school board rate, and for convenience the arrangement is that these parochial boards who collect the poor-rate should also, from the same people, collect the school board rate. We present our precept to the parochial board and the money is paid over to us to administer, just as the parochial board administer the poor-rate, and except that the collection of the school-rate is for convenience in the hands of the parochial board, the change in our position is just the same *quâ* school rate as in the case of the parochial board *quâ* poor-rate, and whatever

exemption is made from the one would equally be made from the other. We are a school board with 25 or 30 blocks of buildings in Edinburgh, and the district belongs to us for school board purposes, and we are as much owners of our school buildings as any other owner of property. We are affected in two ways: we require rates for school board purposes, and we are also owners liable to rates for poor-rate purposes, therefore we are not merely affected by the interference of this bill with our rates, but by creating an entirely new class of exemptions from poor-rate and school board rate, those who do not get the exemption will have their property depreciated in value by the higher rates they will have to pay. Therefore, we are not only in the same position as the parochial board are of being injured by a diminution of the receipts we should get out of our rates, but we should also be injured, as individual owners, by the increase of taxation that would be put upon us.

Mr. SHIRES WILL : The parochial board are the guardians of what I will call the poor law valuation, and they are the persons to protect the poor-rate, and we have given them a *locus standi* to protect the poor-rate. You say they also collect the school board rate.

Pembroke Stephens : Yes, but they have nothing to do with the constituency to the school board, or the expenditure of the amounts raised by them for us. They merely collect the rate.

Pember : This was all fought out in the *London Riverside Fish Market Bill, 1882, on the petition of the School Board for London* (3 Clifford and Rickards, 182).

Mr. CHANDOS-LEIGH : There is the later case of the *Swansea Corporation Bill, 1889, on the petition of the School Board for the Parish of Llansamlet Higher in the County of Glamorgan* (Rickards & Michael, 303).

Pembroke Stephens : In that case there seemed to be in the minds of more than one member of the Court an idea that just as the sanitary authority was the body to represent a locality on sanitary matters, so the school board were the proper people to represent the district where any school board question arose.

The CHAIRMAN : I think there is a difference between taking away a territorial district and taking away certain buildings.

Stephens : The remarks that fell from the Court in that case seemed to show that to their minds there was a representative character about the school board itself.

The CHAIRMAN : What was involved then were educational interests. Here I think the educational interest involved is very small indeed.

It might amount to the one-tenth of a penny in the rate.

Stephens : I submit that the school board are in a representative capacity, so far as the bill can affect their functions, powers or school-rates. It is our money that is dealt with, and we are also the owners of property.

The CHAIRMAN : As owners you are very much on the footing of other owners.

Stephens : As an owner I am entitled to be heard, because the incidence of both the poor-rate and the school board rate is proposed to be altered upon my property. My rateable value is over £13,000, and I pay in total rates about £1,950 a year. Against the *Artizans and Labourers Dwellings (Scotland) Provisional Order (Leith) Bill*, 1880, on the petition of James Barrie and James Heddle (2 Clifford & Rickards, 233), the petitioners were heard as owners of rateable property which would be made liable to additional taxation on account of the bill.

The CHAIRMAN : We regard the school board as representatives not so much of pecuniary interests as of educational interests. In one sense the parochial board are to be heard about the school-rate, because they have to collect it for you.

Mr. HEALY : They cannot possibly defend themselves without defending you.

Stephens : There is the further question now raised by this bill with regard to the principle of exemptions generally : it is exemption of public buildings. Surely we are representatives of public buildings ?

Mr. HEALY : You are now about to ask for a *locus standi* to put something into the bill.

Stephens : We submit that clause 78, subsect. 3, bringing about an alteration of existing legislation at the instance of the promoters does not go far enough. We are proprietors of 25 or 30 public buildings in different parts of Edinburgh as much entitled to exemption as all those buildings mentioned in sect. 70 of the Edinburgh Municipal and Police Act, 1879. I am here on behalf of all the schools in Edinburgh asking to be heard as a class. Can it be said that in this special case of Edinburgh (which is not like the case of the country at large) where there are these special exemptions and where they are proposed to be brought under review by the promoters that we, as owning a class of public buildings, are not to be heard ? That would exclude the very question upon which the Committee would naturally want information. Here is the school board which upon a matter affecting the whole of the schools in Edinburgh has something to say. This is not merely a

collective interest ; this is a case of a class in itself. A class of traders is heard as a class where there is anything that may affect their particular interests. Here is a provision in this bill exempting all the other buildings mentioned in sect. 70 of the Act of 1879.

The CHAIRMAN : That claim to re-open the legislation of 1870 has been already settled in discussing the *locus standi* of the parochial boards. We need not call upon the promoters.

The *Locus Standi* of the School Board is Disallowed.

Agents for Petitioner, *Durnford & Co.*

Petition of (4) THE EDINBURGH STREET TRAMWAYS COMPANY.

Practice—Right of Petitioners to be heard against Clauses of Bill as Amended for Committee.

The petitioners had in their petition objected to certain clauses of the bill, but these clauses had been struck out of the amended bill, and other clauses had been inserted, to one of which the petitioners objected as preserving their obligations, but not their rights, under the Tramways Act, 1870. The practice of the Court being to allow petitioners to be heard against a bill as deposited, a discussion took place as to their right to be heard against a clause inserted in the bill as amended for Committee subsequently to its deposit. After some discussion counsel for the promoters undertook to insert a saving clause in the form required by the petitioners, who thereupon withdrew their claim for a *locus standi* except as against certain clauses of the bill, as to which their right to be heard was conceded by the promoters.

Semble, a petitioner is entitled to be heard against clauses affecting him in a bill as amended for Committee.

The *locus standi* of the petitioners was objected to on the following grounds : (1) the petitioners do not allege in their petition nor is it the fact that any lands or other property belonging to them or in which they are interested will be taken or interfered with under the powers of the bill ; (2) the petitioners are not entitled to be heard against clauses 32

and 33 of the bill, inasmuch as the streets and roads within the city of Edinburgh are not vested in or under the control and management of the petitioners, and the sole control and management of the same are within the jurisdiction and powers of the corporation of Edinburgh, and no interest, right or functions of the petitioners will be affected or interfered with by the said clauses of the bill; (3) the bill does not contain any clauses or provisions directly or indirectly affecting or relating to the provisions of the Acts of the petitioners, nor to the rights, authorities and functions conferred on local authorities by the Tramways Act, 1870, nor to the exercise of such powers by the local authority of Edinburgh, and the petitioners are not entitled to be heard on their petition against the bill on any of the said matters, and the petitioners are not entitled to import into the bill any such clauses or questions, nor to be heard thereon; (4) if the petitioners are entitled to be heard at all, they are only entitled to be heard on clauses 64, 65 and 77 of the bill in so far as these clauses apply to the tramways of the petitioners, and the *locus* of the petitioners should in any event be restricted accordingly; (5) the petitioners do not possess, and at all events do not show by their petition that they possess, any interest intended to be affected by the bill which entitles them according to the practice of Parliament to be heard upon it.

Meysiey-Thompson (for petitioners): Our *locus standi* is conceded against clauses 64 and 65 of the bill, which relate to the licensing and regulation of tramway cars and other public conveyances; and against clause 77, which repeals certain provisions of the Edinburgh Municipal and Police Act, 1879, and the General Police and Improvement (Scotland) Act, 1862, but in our petition we also object to clauses 32 and 33 of the bill. These clauses have been struck out of the bill as amended for Committee, and clauses inserted in substitution for them. We object to one of these clauses which professes to be a saving clause inserted for our protection, but which preserves our obligations under the Tramways Act, 1870, but not our rights.

Pember, Q.C. (for promoters): The bill must be considered in the form in which it was introduced, so that you cannot make any reference to the amended bill.

The CHAIRMAN: If the bill is drawn in a form which would give no *locus standi*, and is altered into a form which would give a *locus standi*, would the petitioners have no *locus standi*?

Pember: The remedy would be that we should suffer on Standing Orders.

Mr. SHIRESS WILL: I understand the practice to be this—that if, in your filled up bill, you remedy the objection made by a petitioner, that does not deprive him of his *locus standi*, because he is entitled to go before the Committee to see that the bill is so altered as to remove his objection; but I do not think we have ever decided that a petitioner cannot say, “The clauses are bad enough in the bill as brought in, but see what they are going to do by amending the bill; they are going to make it worse.”

Pember: To meet the objection of the petitioners I will undertake to insert in the bill the following amended saving clause: “Nothing in this Act contained shall prejudice or affect any rights, privileges, provisions, and obligations conferred, imposed, or incumbent upon the Edinburgh Street tramways company or the Edinburgh Northern tramways company respectively.”

Meysiey-Thompson: On that undertaking I agree to withdraw my claim to be heard against clauses 32 and 33 of the bill as deposited.

The CHAIRMAN: The *Locus Standi* of the Petitioners will therefore be *Disallowed*, except as against clauses 64, 65, and 97 of the bill (as conceded) and so much of the preamble as relates thereto.

Agents for petitioners, *Rees & Frere*.

Petition of (5) CORPORATION OF LEITH.

In this case, clause 22 and sub-sect. 7 of clause 62 of the bill, to which the petitioners objected, had been struck out of the bill at the instance of some other petitioners, and counsel for the bill undertook that they should not be reinstated in Committee. After some discussion as to the right of the petitioners' parliamentary agent to enter an appearance on their behalf at a late hour during the sitting of the Court, the agent decided, upon the above undertaking being given, not to do so, and the *Locus Standi* of the Petitioners was accordingly *Disallowed*.

Kennedy, parliamentary agent (of Durnford and Co.), appeared for the Petitioners.

Petition of (6) THE EDINBURGH AND LEITH HERITABLE PROPERTY ASSOCIATION, THE EDINBURGH AND LEITH MASTER BUILDERS' ASSOCIATION, THE EDINBURGH AND LEITH HOUSE FACTORS' ASSOCIATION, AND OF INDIVIDUAL

OWNERS OF PROPERTY, RATEPAYERS AND OTHERS
IN THE CITY OF EDINBURGH.

Police and Sanitary Provisions—Additional Taxation—Voluntary Association of Land-owners, Builders, &c.—Individual Owners and Occupiers.

The petition was signed by the presidents and secretaries of certain associations of owners of property, builders, and house factors, and individually by these officers and certain other individuals as owners and occupiers of property in Edinburgh, which would be subjected to increased taxation and restrictions as to building by the provisions of the bill. The promoters admitted the *locus standi* of such of the petitioners as were individually the owners and occupiers of property affected by the bill, but objected to the *locus standi* of the associations, on the ground that they were mere voluntary and unincorporated bodies, who did not even allege in the petition that *quâ* associations they were the owners of property affected by the bill:

Held, that such of the petitioners as were themselves owners or occupiers of property affected were entitled to be heard; but that the *locus standi* of the associations must be disallowed.

The *locus standi* of the petitioners (6) was objected to on the following grounds: (1) the petitioners do not allege in their petition nor is it the fact that any lands or other property belonging to them, or in which they are interested, will be taken or interfered with under the powers of the bill; (2) the petitioners, the Edinburgh and Leith heritable property association, the Edinburgh and Leith master builders' association, and the Edinburgh and Leith house factors' association are not entitled to be heard on the said petition against the bill, inasmuch as (1) the said associations are not incorporated, and are not represented by the persons signing the petition on behalf of the said association respectively; (2) the said persons so signing do not possess any mandate or power of attorney or authority entitling or authorising them to sign the said petition on behalf of the said respective associations, or of any persons composing the same; (3) the

petition does not allege or show any such authority as would entitle such persons to sign the said petition on behalf of the said associations, or of persons composing the same or any of them; (4) the petition is not duly or sufficiently signed by the said associations, or by persons authorised in that behalf as required by the rules of Parliament, and the said associations are not entitled, nor are any persons composing the same entitled to appear and be heard on the said petition against the bill; (3) the individual petitioners are not entitled to be heard on the said petition inasmuch as (1) they do not allege that they represent, nor do they in fact represent, the owners or occupiers of property in Edinburgh or the ratepayers of Edinburgh; (2) they are not sufficient either in number or value to entitle them to represent such owners or occupiers or ratepayers; and (3) they do not specifically allege or show that any of their property rights or interests will be interfered with or affected by the bill; (4) nor do the said petitioners represent nor are they entitled to be heard on behalf of the population of Edinburgh, or the interests of the city of Edinburgh, or the citizens of Edinburgh, and they are not entitled to appear in support of any of those interests; (5) the petition contains no such allegations, and does not show such interest as by the rules of Parliament entitles the petitioners to be heard on the said petition; (6) the promoters, the corporation of Edinburgh under their common seal, represent the ratepayers and the community of Edinburgh and the interests of the city, and the petitioners have set forth no grounds entitling them to be heard against the seal of the corporation on any of the matters set forth in the said petition; (7) the petitioners do not possess, and at all events do not show by their petition that they possess, any interest intended to be affected by the bill which entitles them, according to the practice of Parliament, to be heard upon it.

Lestie, parliamentary agent (for petitioners): Paragraphs 2 and 3 of the petition describe whom we are. The object of the bill is to confer upon the corporation of Edinburgh additional powers as regards sanitation, building improvements, and street improvements and other matters which we allege collectively and individually impose additional burdens upon us as owners, and we therefore claim a *locus standi*. I cite as an authority in my favour the *Huddersfield Water and Improvement Bill*, 1876, on the petition of the Trustees of the Charity Estates of the late John Armytage (1 Clifford and Rickards, 230).

Mr. SHIRRES WILL: There was a stronger case, that of the *Edinburgh Municipal and*

Police Bill, 1879, on the petition of John Hope (2 Clifford & Rickards, 149). There a single petitioner was allowed a *locus standi*.

Pember, Q.C. (for promoters): I do not object to an owner being heard.

The CHAIRMAN: Seven of the petitioners sign as proprietors and occupants.

Pember: I do not object to them.

Leslie: All the persons who petition sign as individuals; the presidents and secretaries of associations say they sign as individuals as well as on behalf of these associations, and they are also owners, though this is not stated.

Mr. SHIRESS WILL: Then the question is whether we can recognise the associations.

Pember: We do not contend that there were not proper meetings of the associations.

Leslie: I will call the secretary of the Edinburgh and Leith heritable property association to show that it is a very important association.

Pember: I do not say that it may not be on a very large scale, but I say it is nothing more than a voluntary association, and not incorporated. I admit that the presidents and secretaries may be heard as individuals, because they are owners, but I do not admit their right to a *locus standi* as representatives.

Leslie: The rental represented by the Edinburgh and Leith heritable property association is £400,000, and it is composed of ninety members who are very important owners of property in Edinburgh. I cite the following cases in my favour:—*The Great Western Railway Bill, 1877, on the petition of Traders, Freighters, &c.* (2 Clifford & Rickards, 18); *The London and North-Western Railway Bill, 1880, on the petition of the Mining Association of Great Britain and the Bridgewater Trustees, ib.* 284; *The Southwark and Vauxhall Water Bill, 1880, on the petition of the Corporation of Kingston-upon-Thames, ib.* 315; *The London and North-Western Railway (Additional Powers) Bill, 1883* (3 Clifford & Rickards, 302); *The London and North-Western Railway Bill, 1884, on the petition of Steamship Owners' Association and Irish Steamship Owners' Association, ib.* 415. I submit that an association of builders or owners associated together to protect their common right are entitled to be heard against this bill, which very materially affects their rights.

The CHAIRMAN: What the promoters contend is that at a meeting of the association they might agree with each other with regard to opposition to the bill, and then as individuals they could be heard, but they must not call themselves associations.

Leslie: There is no reason in principle why we should not petition in this way.

Pember: There are two builders' associations, they are not ratepayers; and there are two factors' associations, who are house agents.

Leslie: I cannot press for a *locus standi* for the factors' associations, but I do for the builders' associations, because they are owners.

Mr. HEALY: But they are not associations, *quâ* owners, but *quâ* builders.

Leslie: If I go before a Committee with a petition representing half-a-dozen gentlemen, though they may represent a very considerable interest, it would not have the weight that a petition representing £400,000 a year of rental would.

Pember (in reply): I admit the *locus standi* of all the petitioners who are owners as individuals, but I submit that this Court has always drawn a very broad distinction between traders and freighters and other persons. These are mere voluntary associations of landowners who wish to petition generally against the bill. They are not incorporated bodies. A landowner has a right to petition, to preserve his own interest, and several landowners may, for convenience, join in a petition, but each landowner has only a right to say the bill should not pass, because it interferes with his particular interest; and in the petition he must set up *bonâ fide* his own right and his own grievance. I submit that a mere voluntary association saying they are an association of landowners has no right to be heard; the petition does not say their property is taken, or that the property of the association *quâ* association is touched, but they go into the general question of public policy and travel over the whole of the bill. The petition does not allege that the building trade is affected.

The CHAIRMAN: I was thinking at the time of a speculative builder.

Pember: He would appear as an owner of property, not *quâ* builder.

The CHAIRMAN: We Allow the *Locus Standi* of Individual Owners, and Disallow the *Locus Standi* of the Associations.

Agents for Petitioners, Martin & Leslie.

Agent for Bill, Beveridge.

FOLKESTONE, SANDGATE AND HYTHE TRAMWAYS BILL.

Petition of THE SOUTH OF ENGLAND TELEPHONE COMPANY, LIMITED.

2nd March, 1891.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Extension of Time for Construction of Tramways—Power to Use Electricity conferred on Promoters by previous Acts—Telephone Company without Statutory Powers—Claim for Insertion of Protective Clauses.

The bill extended the time for the opening of tramways authorised by Acts obtained by the promoters in 1884, 1886 and 1888, and for the completion of tramways authorised by an Act obtained by them in 1889. The promoters had first obtained powers of working their tramways by electricity in 1886, and these powers had been made applicable to tramway extensions authorised in 1888 and 1889 by the promoters' Acts of those dates, but up to the present time they had not exercised those powers, not having, in fact, opened any of their tramways for public use. The petitioners were a telephone company, without statutory powers, carrying on business under license from the Postmaster-General between the same places as those connected by the promoters' tramways, and having their wires carried in close proximity to those tramways. They asked to be heard in order to obtain the insertion in the bill of clauses for the protection of their wires from injury from leakage and induction arising from the use of electricity upon the tramways; and they alleged as a reason for their not having opposed the bills which had conferred powers of employing electric motive power upon the tramway company, the fact that their knowledge, like that of the rest of the public with regard to electricity, was not sufficiently advanced at the time those bills were before Parliament, while it had largely increased since that date, and that

during the last two years similar protective clauses for telephone companies had been inserted in numerous bills and provisional orders authorising the use of electricity upon tramways, the power to use which, although authorised in some cases for many years, was now for the first time being put into operation by tramway companies:

Held, that this being an exceptional case, owing to the change which had taken place in scientific knowledge and its practical application since the promoters had obtained their original powers of using electric power upon their tramways, the petitioners were entitled to a *locus standi* to ask for a protective clause.

The *locus standi* of the petitioners was objected to on the following grounds: (1) no property, rights or interests of the petitioners are taken or interfered with under the powers of the bill; (2) the works in respect of which the petitioners seek to be protected have already been authorised by previous Acts of Parliament, and if such works in any way affect or interfere with any property, rights, or interests of the petitioners (which the promoters deny to be the case), such affecting or interference is the result of past legislation, and does not entitle the petitioners to be heard against the bill; (3) the petitioners have no such interest in the subject-matter of the bill as entitles them to be heard against the same.

Pember, Q.C. (for petitioners): This is a bill to extend the respective times for completing and opening certain tramways authorised to be constructed by the Folkestone, Sandgate and Hythe tramways company, and for other purposes. The petitioners are a company carrying on a large business, under license from the Postmaster-General for a long term, in supplying telephonic communications to the public by means of the telephone exchange system, and also by means of private lines in an area including the greater part of Kent. The growth of our business is entirely modern, a very large proportion of our wires having been laid down since 1889, and if we cannot get the protective clauses for which we ask we shall be absolutely powerless. In 1886 this company first took power to work in the ordinary form their tramway by electricity or any other motive power. At that time electric science and knowledge was far more imperfect than it is now, and we did not oppose, nor had

we then the knowledge which would have warranted us in asking for the protection we now do, and last year especially there were several cases in which telephone companies obtained protective clauses of the same kind as we should ask for here. We did not appear in 1886 or in 1888 or in 1889, but recently a very great change and improvement, both in electrical knowledge and its application, has been brought about, and the tramway company intend to work their line by electricity, and put into practice for the first time those powers which, though they have been on the statute-book for years, have been practically a dead letter. Together with this advance in electrical knowledge comes the discovery of the damage which one set of electrical currents can do to another; the two great ways in which this damage is effected are one by leakage, the other by induction, and in no case is the danger so great as in the case of tramway currents, because the way in which they use the earth with high power as a return for their circuit causes disturbance in every direction to telegraph wires, and more particularly to telephone wires, as they are conducted with very small currents at low tension, and the instruments with which you listen and into which you speak are of a most sensitive order; consequently a tramway company using the earth as a means of return for their circuit use it in such a way as to make it useless to their neighbours, the telegraphs and telephones, but more especially the telephones. This bill is in effect a revival of powers, because the powers expire so soon, that the company could not, unless they obtained an extension of time, open their tramways for use with electric power within the prescribed period. We do not ask that an extension of time should not be given, nor do we seek to review or reverse the legislation of 1886, 1888 and 1889, which conferred the electric powers upon the promoters, but we ask to be put in the same position by a protective clause now as we should have been in when the former bills passed, if we, in common with the public, had known then what we know now of the gigantic effect upon such things as telephones of leakage and induction.

Mr. CHANDOS-LEIGH: Will you give us the names of any Tramway Acts in which the clause you propose to insert has been inserted?

Pember: In all the following bills this clause or something very like it was inserted:—*Plymouth Tramways, Lea Bridge, Leyton and Walthamstow, South Staffordshire Tramways, City and Southwark Railway, North Metropolitan Tramways, Penzance and Newgate Tramways,*

Glasgow District Subways, Western-Super-Mare Tramways, Wellingborough and District Tramways, Torrington and Walpole Tramroads, Lancaster and District Tramways, Gosport, Alverstoke and Oldham Tramways, Tong Local Board Tramways, Poole and Bournemouth Tramways, Bradford and District Tramways, Drypool and Marfleet Tramways. The clause provides that the tramway company shall not construct their electric circuits in such a way as to injuriously affect the wires of telephone companies, with a reference to the Board of Trade in case of dispute as to whether the proposed construction of electric circuits is calculated to injuriously affect telephone wires. [*A clause of this kind was here handed in by the learned counsel.*]

The CHAIRMAN: Your own proviso in this clause says, with regard to future wires, that the Act shall only apply if you have taken reasonable precautions in the protection of your wires, and then the question arises, have you protected your wires against existing ones? and you say no, because science was not sufficiently advanced.

Pember: Yes.

The CHAIRMAN: You took what precaution you considered reasonable in that state of scientific knowledge?

Pember: Yes; and we say under the circumstances that it would be hard if, because we did not appeal in 1866 and 1888 and 1889, therefore we shall not get any protection when the company comes for an extension of time. The declaration of Parliament by putting such a clause in so many bills has been precise and distinct to the effect that a claim is salutary, not only in the interests of the company, but of the public.

The CHAIRMAN: I think there is something in your point that though you are not representing the public except indirectly, still you are asking for a *locus standi* not in the interests of the company only, but in the interests of the public who use the telephone.

Worsley-Taylor, Q.C. (for promoters): If our tramways are to be used under such clauses as the petitioners propose it will enormously add to the cost of construction and of the working of these tramways, and will involve us in liabilities not contemplated when we undertook our obligations in 1888 and 1889, and we submit that a petitioner on a mere extension of time bill is not entitled to come and seek to alter a Parliamentary contract which he might have got varied at the time when it was made.

The CHAIRMAN: I do not think you must lay that down too broadly, because things may happen in the course of time, and if a company

does not complete its works within a given time and comes for an extension of time you have to consider what may have happened since it obtained its original Act.

Worsley-Taylor: The authorities show that where there is a mere naked extension of time there is no *locus standi*, unless it is shown that injury will follow to the petitioners from the extension of time itself, and in this case this does not arise from the extension of time, but from the exercise of our rights under past legislation. The last specific authorisation of working by electricity over a new piece of line was in 1889, and the promoters have shown that the clauses they propose to insert in this bill were actually inserted in a number of bills of that year, and yet they did not ask for a similar clause in one Act of that year, and now say that they did not know quite so much then as they do now. We submit that they are estopped from appearing against us on an extension of time bill, and that there is nothing to take this case out of the ordinary rule. The promoters further submit that it is very doubtful whether the petitioners have a *locus standi* as their petition does not allege that they have any statutory rights; they are mere licensees of the Postmaster-General to carry on the telephone business in Kent.

The CHAIRMAN: They have an existing interest acquired in other than a statutory way, and the petitioners say it concerns the public a great deal to maintain that.

Worsley-Taylor: Then the guardian of the public in this matter is the Postmaster-General, whose licensees the promoters are.

Mr. SHIRESS WILL: As I understand, in 1889 the tramway company were in Parliament asking power to construct fresh tramways, and their bill passed, there being no opposition from this telephone company. In the same session of Parliament the telephone company or other telephone companies were quite alive to the mischief which they now apprehend, because they opposed other tramways, and got a similar clause to the one that was inserted in the bill.

Worsley-Taylor: It comes to this: is a man allowed to say, though all the scientific world knew of this danger, I chose not to enquire into it or shut my eyes to it, and I am to be allowed to come afterwards and open up past legislation.

The CHAIRMAN: The Court consider this an exceptional case, owing to the change which has taken place both in scientific knowledge and in the practical applications of it, since the time when the promoters got their Acts; and under the circumstances they grant a *Locus Standi* to

ask for a clause, but they wish to say that they express no opinion as to the extent to which any protective clause that might be asked for by the Telephone Company should go, which is a matter for the Committee.

Agents for Petitioner, *Martin & Leslie*.

Agents for Bill, *R. W. Cooper & Sons* and *C. E. Mortimer*.

FORFAR AND BRECHIN RAILWAY BILL.

Petition of (1) THE PROVOST, MAGISTRATES AND TOWN COUNCIL OF FORFAR, THE EARL OF STRATHMORE, JAMES TAYLOR, AND MANUFACTURERS AND TRADERS IN FORFAR.

16th March, 1891.—(*Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Abandonment of Railway Authorised by Bill of Previous Session, and Authorisation of another Railway in Substitution—Corporation of Scotch Burgh Alleging Injury to Town—Traders—Conversion of Local into Through Line—Loss of Present Railway Facilities to Town at Present on Main Line—Support of Corporation to Bill of Previous Session—Breach of Faith—S. O. 134 [Municipal Authorities and Inhabitants of Towns.]

The bill empowered the promoters to abandon a short railway (No. 3) authorised by the Forfar and Brechin Railway Act, 1890, and in substitution therefor to construct a railway described in the bill as Railway No. 1; and to construct a further railway (No. 2) in extension of the main line authorised by the Act of 1890, to a point north of Brechin on the Caledonian railway, with which railway Railway No. 2 was to form a junction close to Marykirk station on the same railway. Railway No. 3, of 1890, which was sought to be abandoned, was a short spur line designed to continue the main line, Railway No. 1, of the Act of 1890, between Brechin and Forfar, into the centre of the town of Forfar, where a station was to have been erected. Railway No. 1, which it was proposed by the bill to substitute for this

railway, was a short railway commencing at a point a little south of Forfar on the Caledonian railway, and terminating by a junction with Railway No. 1, of the Act of 1891, and thus avoiding the town of Forfar altogether. The petitioners were the corporation of Forfar, the petition being also signed by the town clerk of Forfar in a private capacity as an occupier, and by a landowner, whose *locus standi* against the bill was conceded.

The petitioners alleged injury to the town and trade of Forfar by the abandonment of Railway No. 3 of the Act of 1890, and the consequent loss to them of traffic coming over the Forfar and Brechin railway, which would have been conveyed over Railway No. 3 into the centre of the town, and by the substitution for Railway No. 3 of a loop line avoiding Forfar, and really designed, as they contended, to form a new direct through route north and south in the hands of the Caledonian company, avoiding Forfar and leaving it to be served by a branch railway instead of being, as it was at present, a station on the main line of the Caledonian company. In support of this argument they referred to an agreement scheduled to the Forfar and Brechin Railway Act, 1890, between the promoters of that railway and the Caledonian company, whereby the Caledonian company was to work the railway and become guarantors of a dividend upon the capital required for it. They further alleged that the alteration of the Act of 1890 by the bill was in breach of an understanding between the corporation and the promoters, under which the former supported the bill for the promoters' Act of 1890. The promoters contended that the petitioners would lose none of the substantial advantages of the scheme authorised in 1890, and that at the present time the Caledonian company were under no obligation to stop through trains passing northwards and southwards over their main line at Forfar station, and that the *status* of the petitioners as representing the interests of the burgh of Forfar would not be materially altered by the bill :

Held, however, that the petitioners were entitled to be heard generally against the bill.

The *locus standi* of the petitioners (1) was objected to on the following grounds: (1) the burgh of Forfar and its inhabitants are not injuriously affected by the bill within the meaning of S. O. 134; (2) the injuries alleged are not of the character contemplated by the S. O., and are too remote and uncertain to entitle the corporation to be heard; (3) none of the proposed railways or any part of them will be constructed within the burgh, and it is not alleged or shown that any land, house, property, right or interest of the corporation will be taken or affected; (4) it is not true, as alleged in the petition, that the corporation were induced to support the bill for the Forfar and Brechin Railway Act, 1890, by statements of a misleading nature, and at variance with the scheme now submitted to Parliament; (5) there are no provisions in the bill injuriously affecting the corporation or the inhabitants of the burgh, and no grounds of objection are stated in the petition entitling them to be heard according to practice; (6) as regards James Taylor, the petitioner does not specifically allege, nor has he in fact such interest in the objects and provisions of the bill as would confer a *locus standi*; (7) no lands or other property belonging to him, or in which he is interested, will be taken or interfered with under the powers of the bill; (8) it is not true, as alleged in the petition, that he is the lessee and occupier of lands proposed to be taken or interfered with for the purposes of the proposed Railway No. 1; (9) he is not entitled to represent the inhabitants of the burgh, and there has not been, and could not be, any delegation to him of authority to represent them; (10) as regards the traders, no lands or property of the traders are taken or used, and none of their rights and interests are interfered with; (11) they are a section of the manufacturers and traders in the burgh petitioning in their individual capacity, and do not in fact represent the manufacturers and traders of the burgh, many of whom are in favour of the bill; (12) they are not entitled to be heard as representing the traders or inhabitants of the burgh, as it is not alleged that the petition has emanated from any public meeting; (13) they have no such interest in the bill as will confer a *locus standi*; (14) generally, as regards all of the said petitioners, the petition is based on a misapprehension of the intention and objects of the bill. Some of the statements in the petition are, in many respects, untrue and

misleading, and no interest is disclosed entitling any of the said petitioners to appear according to practice; (15) the apprehended diversion of traffic from the railways of the Caledonian railway company and of a diminution of the facilities of transit and travel at present afforded by that company to the inhabitants of the burgh is unfounded and conjectural, and in any case the allegations in that respect contained in the petition apply not to the promoters but to the Caledonian railway company, and cannot, therefore, entitle the petitioners to be heard; (16) the petitioners are not injuriously affected by, and are not entitled to object to the proposed abandonment of the promoters' authorised Railway No. 3. The promoters' authorised Railway No. 4 will connect their line in a direct and convenient manner with the burgh and the existing station of the Caledonian railway company in Forfar; (17) the petitioners do not possess, and at all events do not show, by their petition, that they possess any interest intended to be affected by the bill, which entitles them, according to the practice of Parliament, to be heard against it.

Pembroke Stephens, Q.C. (for petitioners): Clause 4 of the bill empowers the powers to construct the following railways: "A railway (No. 1) one mile four furlongs and one hundred and twenty-one yards or thereabouts in length, commencing in the parish of Glamis at a point three hundred and seventy yards or thereabouts from the centre of the bridge carrying the public road from Nether Drumyley to Kirriemuir, over the Caledonian railway company's main line between Perth and Forfar, measured in an easterly direction, and terminating in the parish of Kirriemuir by a junction with Railway No. 1 of the authorised Forfar and Brechin railway at a point four furlongs one hundred and forty-three yards from the commencement thereof." "A railway (No. 2) six miles two furlongs and one hundred and seventeen yards or thereabouts in length, commencing in the parish of Brechin by a junction with the termination of Railway No. 1 of the authorised Forfar and Brechin railway, and terminating in the parish of Logie Pert, at a point six hundred and seventy yards from the centre of the bridge which carries the Caledonian railway company's main line from Perth to Aberdeen over the public road to Marykirk bridge, measured in a northerly direction." And clause 10 provides that: "The company shall abandon and relinquish the construction of Railway No. 3, authorised by the Act of 1890," that is the Forfar and Brechin Railway Act, 1890.

Railway No. 1 of the bill is to take the place of the abandoned Railway No. 3 of 1890, but the result to the petitioners (as representing Forfar) of the substitution of one railway for the other is an important and unfavourable one. Sect. 5 of that Act thus describes Railway No. 3, which is to be abandoned: "A railway (No. 3) five furlongs and ten yards or thereabouts in length, wholly situate in the parish of Forfar, commencing in the said parish of Forfar at a point forty yards or thereabouts, measured in a north-westerly direction from the centre of Zoar bridge, which carries the public road from Forfar to Brechin over the Caledonian railway company's main line between Perth and Forfar, and terminating at the intended point of commencement of railway No. 1." Railway No. 3, therefore, was a short railway carrying Railway No. 1, which was the main line authorised between Brechin and Forfar, but which terminated just outside Forfar, into the town of Forfar, where it terminated in a new station erected to accommodate traffic coming from Brechin over the new line into Forfar. The petition is signed by the proper representatives of the town, who are not merely representatives in the ordinary sense, but the representatives of "the common good." As regards the right of the corporation to represent the interests of the trade generally no question can arise. As regards the claim of the traders to appear on the same petition in addition to the corporation I can call evidence to show that the signatures are those of all the large traders in Forfar. (*North British and Glasgow and South-Western Railway Companies Bill, 1890, Rickards and Saunders, supra, 50.*) Lord Strathmore, who signs the petition, is the owner of land proposed to be taken compulsorily, and his *locus standi* is not objected to. Last year the line proposed was simply a Forfar and Brechin line, and nothing else, and terminated in a station in the centre of Forfar. By this bill the separate Forfar station is given up, Railway No. 3, authorised by the Forfar and Brechin Railway Act, 1890, is abandoned, and a new loop line passing by and avoiding Forfar is added at the Forfar end, and a new extension line is added at the Brechin end, from Brechin to the Caledonian railway at Marykirk, so that a continuous line is for the first time proposed from a point north of and beyond Brechin, then by the line authorised last year to a point outside and avoiding Forfar and thence by a short new line authorised by the bill on to the Caledonian companies railway south of Forfar. What we say is, that under the Act of 1890 a purely

local line from Brechin to Forfar was authorised, but the line now proposed will be a new and shorter route for traffic going northwards from a point south of Forfar to Brechin and Marykirk which will not go to Forfar at all. Consequently, Forfar will no longer be on the main Caledonian line as it is now, and Forfar will lose a separate station altogether, and all the advantages of a separate and independent line, with stations of its own. We shall, consequently, lose many of the advantages which we expected by the Act of last year, the promoters of that Act, having obtained the name and advantage of the provost of Forfar, in support of their proposals on the express belief and understanding that this was to be a purely local line. This bill, in fact, seeks to create a new and virtually competitive line, as far as Forfar is concerned. The bill of last year brought traffic to Forfar, by creating a new access to Forfar, whereas this bill creates a new, competitive, and shorter route from north to south, and south to north, without passing through Forfar at all. In other words, the line sanctioned last year as a feeder to Forfar, is now to be converted into a line for diverting traffic from Forfar, which must have passed through Forfar, under the bill of last year. This is clearly intended to be a through line, having through interests as distinct from local interests.

The CHAIRMAN: It seems to be opposed by the owners of the through line, the Caledonian company.

Pembroke Stephens: That is so, and I now come to the agreement between this company and the Caledonian company, which is dated 2nd July, 1890, up to which date this was purely an independent company, and an independent line. By this agreement which was scheduled to and confirmed by the Forfar and Brechin Railway Bill, 1890, in the Second House. Under it the Caledonian company are to be guarantees up to $3\frac{1}{2}$ per cent., and are to work the railway and provide locomotive for doing so. I submit that this supplies a very good motive for the wish to get traffic other than local traffic upon this line, and for making what was a purely local line part of a through shortened line in the hands of the Caledonian, while Forfar, which was on the main line of the Caledonian company, will no longer be so. We represent the interests of a great town, and claim to be heard against a charge in the character and class of the railway communication, which is now proposed to be entirely altered by this bill, in breach of an undertaking entered into between the promoters and the corporation of Forfar last session. Now, with

regard to the traders who petition. After the notices were given there was a representative meeting of Forfar traders, and resolutions against the bill were unanimously passed.

Worsley-Taylor, Q.C. (for promoters): The real point is, can traders petition when the corporation appears and raises the same points?

The CHAIRMAN: We say nothing as to a case where there might be two petitions. If these traders were appearing by a separate petition we should have to consider that, but they appear on the same petition.

Pembroke Stephens: I am only contending for one joint petition. Having regard to what took place last session, and the totally different character of the proposal in this bill, I submit the town ought to be heard, and they can most conveniently be heard by the Provost of Forfar and Town Council as representative of "the common good," and by the traders as illustrative of the mischief caused by the withdrawal of the fast trains and facilities which they now possess.

Worsley-Taylor: The petitioners state that they are entitled to a *locus standi* on the ground that we propose to abandon part of the line authorised last year, but that was a mere permissive power, and I know of no authority for a *locus standi* in such a case.

The CHAIRMAN: If it was abandonment of that line alone I do not know that they would be entitled to a *locus standi*, but when it is abandonment with a view to substitute another line that alters the case.

Worsley-Taylor: The real point, no doubt, is alteration of a line from a local to a through line, and not abandonment. The petitioners say that this was originally a line from Forfar to Brechin and that now we are going to extend it, and that consequently the result may be that Forfar will be injured.

The CHAIRMAN: That it may be would be quite sufficient ground to entitle him to argue it before the Committee on the bill.

Worsley-Taylor: The question is, what damage will accrue to them if the bill passes, and whether that which they got last year will be taken from them?

The CHAIRMAN: Not only what they got last year, but what they have had for a long time past, namely, the advantage of being on the Caledonian main line north and south.

Worsley-Taylor: There was no necessity for the trains of the Caledonian company to stop at Forfar, but if it was their interest to do so it will probably continue to be their interest to stop at Forfar, and there is nothing in this bill to prevent them doing so. If a *locus standi* is granted to the petitioners it will follow that

whenever a bill is brought in to extend a line the people at the terminus of the existing line will have the right to be heard against it.

The CHAIRMAN: Supposing any considerable town is at present on a through line, and there is a proposal to make a new line, which gives a shorter route, and avoids the town altogether, it seems natural that they should be heard on the ground of apprehended injury by diversion of the through route.

Worsley-Taylor: Yes, but if the traffic can be diverted now, as it can be in two ways, then according to practice there is no *locus standi*.

Mr. CHANDOS-LEIGH: Suppose the Caledonian company bought you up?

Worsley-Taylor: Then, perhaps, they would have the power to divert traffic from Forfar, but they need not stop their trains there now.

The CHAIRMAN: Forfar would become a second or third-rate station.

Worsley-Taylor: At the present time traffic can be diverted from Forfar, and under the bill there may be a possible diversion of some traffic, and that is all.

Mr. CHANDOS-LEIGH: I think your real point is that the injury is a shadowy one.

Worsley-Taylor: As to the agreement, the petitioners allege that this was a purely local line, and that no such thing as traffic being carried past Forfar was contemplated. This agreement is in the Act to which the petitioners say they were parties, and article 4, sub-sect. 2 of the agreement refers in express terms to through traffic.

The CHAIRMAN: What Forfar complains of is the possibility that the main line will be diverted by agreement between the Caledonian company and the promoters, and that they will be put in the position of being on a side line.

Worsley-Taylor: I submit that the agreement distinctly contemplates through traffic, and I am prepared to show that we both in fact contemplated the user of this line for through traffic before the bill came before Parliament.

The CHAIRMAN: I think it all justifies very much the apprehension of Forfar that you may come to terms with the Caledonian company, and that the traffic which now passes through Forfar might be carried past it and avoid it altogether. The *Locus Standi* of the Petitioners is *Allowed*.

Agents for Petitioners, *W. Robertson & Co.*

Petition of (2) THE CALEDONIAN RAILWAY COMPANY.

Diversion and Partial Abandonment of Authorised Railway—Agreement for Petitioners to work

Railway as already Authorised—Petitioners not willing to work Railway as Altered by Bill—Breach of Agreement—Competition and Diversion of Traffic—Through and Local Traffic—Formation of Junctions with Petitioners' Railway, How far entitling them to be heard generally, if available for purposes of Competition—Alleged Improvement of Existing Competition—S. O. 133—[In what cases Railway Companies to be heard].

The bill authorised the abandonment of a portion of the Forfar and Brechin railway, as authorised by a bill of the previous Session, and the substitution of a short railway for the abandoned portion. The petitioners, the Caledonian railway company, objected to the bill on the ground (1) that it was in breach of an agreement between the promoters and themselves, which was scheduled to and confirmed by the Forfar and Brechin Railway Act, 1890, whereby they (the petitioners) had undertaken to work the railway, as then proposed to be constructed, in perpetuity, and to guarantee a dividend on the capital of the company; (2) as enabling the promoters, or any company working the railway as altered by the bill, to compete with them for traffic arising south of Forfar, and going to Brechin and beyond by railway No. 2 of the bill, to a point on their own railway north of Brechin, between which points they (the petitioners) had an existing, but more circuitous, route of their own; and (3) because the bill authorised the formation of junctions with the petitioners' railway, which, they alleged, would enable the promoters to compete with them for through traffic going north and south past Forfar. On this ground, as well as grounds (1 and 2), the petitioners claimed a general *locus standi*.

The promoters denied the right of the petitioners to be heard generally on ground (3) according to previous decisions of the Court, and as to grounds (1 and 2), declared their willingness to include the railways as altered by the bill in the agreement scheduled to the Act of 1890,

but this the petitioners declined to entertain :

Held, that the petitioners were entitled to be heard generally against the bill.

The *locus standi* of the petitioners (2) was objected to on the following grounds: (1) the promoters admit that for the purpose of forming junctions between the railways proposed to be authorised by the bill and the railways of the petitioners' compulsory easements over the lands of the petitioners are sought, and they admit the right of the petitioners to be heard against the making of such junctions and the taking of such compulsory easements, but they deny the right of the petitioners to be heard against any other provisions of or powers sought by the bill; (2) the alleged taking or user or any interference with the lands and railways of the petitioners does not entitle them to be heard against the bill except as hereinbefore admitted; (3) the petition does not allege or show nor is it the fact that any such competition between the petitioners and the promoters would be caused by or result from the bill if passed, or by or from the railways to be thereby authorised as according to the practice of Parliament entitles the petitioners to be heard; (4) the alleged apprehension of diversion of traffic (even if well founded, which the promoters deny) is not such diversion of traffic as would amount to competition within the meaning of S. O. 130, and if it did such competition would be too remote and insignificant to entitle the petitioners to be heard in respect of it against the bill; (5) the petitioners' rights and interests under the agreement referred to in paragraph 12 of the petition will not be so altered or affected (if at all) as to entitle them to be heard, and the promoters deny that any proposed alterations or extensions of their railways must under the said agreement be subject to the approval of the petitioners; (6) the allegations that the proposals of the bill are premature, and as to the promoters' financial position, engineering, and the estimate of expense, even if well founded, which the promoters deny, would not give the petitioners any right to oppose the bill; (7) several of the allegations of the petition are untrue and misleading, and none of them show that the petitioners have any such interest in the objects and provisions of the bill (save as above expressly admitted) as entitles them to be heard against it.

Saunders, Q.C. (for petitioners): The Caledonian railway company claim a general *locus standi* against the bill on the following

grounds: First, on the ground of competition by the railway of the promoters as diverted and altered by the bill, because if the loop line (Railway No. 1 of the bill) is made as proposed from a point south of Forfar to join the main line authorised last year from Forfar to Brechin, and a prolongation of that railway from Brechin to Marykirk (*i.e.*, Railway No 2 of the bill) is also authorised, that line will form a competitive route with an existing and more circuitous railway which goes by an easterly curve past Guthrie between the same points. Secondly, we say that this alteration of the Forfar and Brechin railway of last year is in violation of the agreement between us and the promoters of that railway, that we should work their railway as authorised in 1890 in perpetuity. Article 2 of that agreement, which is contained in the first schedule to the Forfar and Brechin Railway Act, 1890, is as follows: "Upon the construction, completion and opening by the sanction of the Board of Trade of the railways and each part thereof, the first parties shall, in perpetuity but subject to the provisions in article ten hereof, work and manage the traffic upon, and maintain the same, and shall provide the locomotive power, rolling stock, and plant of every kind (except the furnishing and conveniences to be provided by the second parties mentioned in article first hereof) necessary for the working of the traffic from the date of the opening thereof for passenger traffic by authority of the Board of Trade as regards the working and management, and from twelve months thereafter as regards the maintenance. The first parties shall work and manage the railway under the provisions of this agreement in a proper, safe and convenient manner, and so as fairly to develop the traffic to, from, and on the same. The first parties shall, except as hereinafter provided, fix the tolls, rates and charges for and in respect of all traffic using the railway or any part thereof." And article 10 there referred to is as follows: "This agreement shall be in perpetuity subject nevertheless to the unconditional determination thereof by the second parties at the end of ten years from the passing of this Act confirming this agreement upon six months' previous notice in writing by the second parties to the first parties, and on such determination the second parties shall repay to the first parties any advances under article 6 hereof." It is no answer to us to say that we may have the option of working the railway as altered by the bill, because that is not the railway we agreed to work and to guarantee a dividend of $3\frac{1}{2}$ per cent. upon, and we are not willing to work the railway as it is proposed to be altered by the bill.

Mr. CHANDOS-LEIGH: If the promoters come to abandon a bit of the line authorised last year, are not you to be heard?

Saunders: Yes; the mere abandonment of part of their line ought to give us a *locus*. The real point is, we having promised this guarantee on the traffic for the purpose of making the line for one purpose, the promoters now claim the right to propose other lines that will alter the whole character of this railway. Besides this, and as our third ground for a *locus*, the promoters will take our land for the purpose of a junction which will enable them to compete with us, and I submit that I am entitled to a *locus standi* on that technical ground and even though they only take power to make a junction with us.

Worsley-Taylor, Q.C. (for promoters): I concede your right to a limited *locus* as to the junction.

Saunders: I claim a general *locus standi* in respect of the junction, and I cite the following cases where, notwithstanding that it was only an easement which was proposed to be taken, still it was held that the company were entitled to a general *locus standi*. *Caledonian Railway (Additional Powers) Bill, 1872, on the petition of the North British Railway Company* (2 Clifford & Stephens, 256); *Bridgewater Railway Bill, 1886* (Rickards & Michael, 89); *East and West Yorkshire Union Railway Bill, 1886, ib., 98*; *West Highland Bill, 1889, on the petition of the Callander and Oban Railway Company and the Caledonian Railway Company, ib., 311*.

Worsley-Taylor (in reply): I will deal with the point as to the junction first, the Bridgewater railway and the East and West junction railway cases are both of them cases of crossing and not cases of mere junction. That is the distinction the Court has drawn throughout the whole of these cases. The *Callander and Oban* petition was a case of junction, but it turned more on the question of competition and diversion of traffic, nor does it follow from that case that if competition had not been there the Court would have given a *locus standi*. The other cases cited were both cases of crossing, and the *locus standi* was limited. I cite in my favour the *Oxford and Groombridge Railway Bill, 1883, on the petition of the South-Eastern Railway Company* (3 Clifford and Rickards, 326), where the two things—competition and junction—were separated and a *locus standi* were given on the ground of competition generally, and not on the ground of the junction.

Mr. CHANDOS-LEIGH: In the case of the *Rotherham, Blyth and Sutton Railway Bill,*

1891 (Rickards & Saunders, *infra*, p. 152), a limited *locus standi* was granted in the case of a crossing.

Worsley-Taylor: Yes, there is also another case of the *East and West Yorkshire Union Railways Bill, 1882* (3 Clifford & Rickards, 142), where only a limited *locus standi* was granted, though there was both a junction and running powers.

The CHAIRMAN: We are disposed to look to the broader features of this case than to take it on junction alone.

Worsley-Taylor: Now I come to the question of competition. According to practice it must be a new competition, and not a mere improvement of competition already existing. The petitioners' case is, therefore, that this new competition will be brought in by conversion of a local line into a through line, but I submit that nothing more can be done under this bill than could have been done last year, and by clause 18 of the bill the railways proposed by the bill are to form part of the undertaking of the company, and, as such, could be worked by the Caledonian company.

The CHAIRMAN: There are two kinds of competition; one is for through traffic, and the other is for local traffic from Forfar to Marykirk.

Worsley-Taylor: There is not a word in the petition about local traffic; the whole case is, that through traffic may be taken off the Forfar and Guthrie and Bridge of Dun line and diverted over this railway, but there is nothing about local traffic, and in this the petition differs entirely from that of the Provost and Corporation of Forfar. The petitioners, the Caledonian company, have shown that we are in their hands, and if they do not choose to make an arrangement with us, we cannot convert this into a through line.

The CHAIRMAN: Have you completed your argument on this point?

Worsley-Taylor: Yes.

The CHAIRMAN: The *Locus Standi* of the Caledonian Company is Allowed.

*Agents for Petitioners, Grahames, Currey and Spens.

Agents for Bill, Durnford & Co.

GLASGOW AND SOUTH-WESTERN RAILWAY (STEAM VESSELS) BILL.
[H.L.]

Petition of (1) THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY; AND (2) THE CALEDONIAN RAILWAY COMPANY.

4th June, 1891.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Mr. HEALY, M.P.; and Mr. BONHAM-CARTER.)

Railway Company seeking Steamboat Powers—Competition—Petition of Railway Companies Working and Owning Competing Line—Petitioning Company Joint Owners of Railway with Promoters—Alteration of Status, and Diversion of Traffic—Improvement of Existing Competition—Special Clauses of Bill relating to Combined Railway and Sea Fares, &c., &c.—Railway Clauses Act, 1863 (Part IV.), sect. 30.

This was a bill to authorise the Glasgow and South-Western railway company to provide and use steam-vessels between ports and places on the River and Firth of Clyde. The petitioners (1), the Lanarkshire and Ayrshire railway company, claimed to be heard on the ground of competition, as being competitors with the promoters for traffic from Glasgow to Ardrossan, and thence by steamers, at present independently owned, to the Isle of Arran. Traffic carried by the petitioners (1) between these points passed over a railway between Glasgow and Barrmill, jointly owned by the promoters and the Caledonian railway company, a *minimum* toll for the use of this railway being charged in respect of traffic so carried, and it was then carried by (2) the Caledonian company over the Lanarkshire and Ayrshire railway, which was worked by the Caledonian company for 50 per cent of the profits, from Barrmill to Ardrossan and there shipped to Arran. The petitioners (1) claimed to be heard on the ground of competition as interested to the extent of 50 per cent. in the traffic thus carried over their railway, and destined for places on the coast to which steamers ran from Ardrossan. The promoters already had an independent railway of their own

between Glasgow and Ardrossan, and the petitioners contended that if they were authorised to run steamers of their own they would obtain a practical monopoly of traffic between Glasgow and Ardrossan and the ports to which they would be enabled to convey traffic in their own steam-vessels. It appeared, however, that in addition to their railway being worked by the Caledonian company, the petitioners (1) had no control over the traffic carried over their line or the fixing of the rates for it, and that the bill in no way altered the *minimum* toll at present charged for the passage of such traffic over the joint railway of the promoters and the Caledonian company between Glasgow and Barrmill:

Held, that under these circumstances the interest of the petitioners in the provisions of the bill was not sufficient to entitle them to be heard against it.

The petitioners (2), the Caledonian railway company, who worked the Lanarkshire and Ayrshire railway company, also claimed a *locus standi* as being interested as partners and joint owners with the promoters in the Glasgow and Barrmill railway, and in tourist traffic to Arran, and generally in traffic to places upon the Firth of Clyde below Greenock and Gourrock to which they had access in competition with the promoters, and they claimed to be heard on account of the alteration in their *status* as joint owners of the Barrmill and Glasgow line, and generally on the ground of competition. On the ground of competition they objected generally to the powers conferred upon the promoters by clause 4 of the bill [Power to company to provide and use steam-vessels], and they objected on special grounds to the proviso to clause 5 [Power to charge for use of steam-vessels], “that the amount of through fares and rates by railway and steam-vessels may be less than the amount of the combined local fares and rates,” as contrary to the general law as contained in sect. 30 of the Railway Clauses Act, 1863 [Part IV.]; to the provisions of

clause 7 [Power to make agreements for supply of steam-vessels]; and to clause 8 [Power to make agreements with owners of piers, &c.] as unfair and prejudicial to themselves as competitors with the promoters. It was objected generally by the promoters that the petitioners, not being as a company owners of steam-vessels [although some of their directors had formed themselves into a limited company for owning steamboats], could not be heard generally on the ground of competition, and further that the bill at most improved an existing competition :

Held, that the petitioners were not entitled under the circumstances to be heard generally on the ground of competition, but that they were entitled to be heard against clauses 5, 7 and 8 of the bill.

The *locus standi* of the petitioners (1) was objected to on the following grounds: (1) the petitioners are not owners of any steam-vessels carrying on traffic between any places, between which it is sought to empower the promoters to work and use steam-vessels, and have no such interest in the traffic which the bill seeks to accommodate, as to entitle them to be heard against the bill; (2) the promoters deny that the powers contained in the bill would place them in a position detrimental to proper competition, &c., or give them any such monopoly as stated in paragraph 12 of the petition, or establish any such new or further competition as to entitle the petitioners to be heard against the bill in respect thereof; (3) the promoters do not admit that the bill would confer upon them, as stated in paragraphs 8 and 9 of the petition, power to make agreements prejudicial to the petitioners or to the exclusion of other steam-vessels, and those paragraphs disclose no grounds upon which, according to the practice of Parliament, they are entitled to be heard against the bill; (4) so far as the objections of the petitioners to the bill, as set forth in paragraphs 11 and 12 of the petition, are founded upon the minimum toll now payable in respect of traffic carried over the Glasgow and Kilmarnock joint line, the bill contains no provisions dealing with the said tolls, or altering the position of the parties under existing legislation with reference thereto, or conferring upon the petitioners any right to ask for the abolition thereof; (5) the petition discloses no grounds entitling the petitioners to be heard against the bill.

The *locus standi* of the petitioners (2) was objected to on the following grounds: (1) the petitioners are not owners of any steam-vessels carrying on traffic between any places between which it is sought to empower the promoters to work and use steam-vessels; (2) so far as the petitioners have any interest in the traffic in the river and Firth of Clyde, for the accommodation of which powers are sought by the bill, such interest is not affected by the bill so as to entitle the petitioners to be heard against it, and the bill does not confer upon the promoters any new or further powers to compete for or divert traffic, in which the petitioners are now interested, so as to entitle them, according to the practice of Parliament, to be heard against the bill; (3) the promoters deny that the effect of the bill would be to place in their hands the whole route for coast traffic, both by water and land, as stated in paragraph 11 of the petition, or to give them a greater control of the traffic than they now possess, or cause any such alteration of the relative positions of the parties as to entitle the petitioners to be heard against the bill; (4) the provisions contained in clause 5 of the bill are in accordance with the present practice, both of the promoters and the petitioners, and do not alter the present rights and powers of the promoters and the petitioners as joint owners of the Glasgow and Kilmarnock joint line, or otherwise as regards the traffic referred to in paragraphs 12 and 13 of the petition, and do not authorise any variation of the general law in respect of which the petitioners have any right to complain or are entitled to be heard against the bill; (5) the promoters do not admit that clauses 7 and 8 of the bill would have the effect stated in paragraphs 14 and 15 of the petition, or would confer upon the promoters further powers to make agreements prejudicial to the petitioners, and, even were it otherwise, the petitioners are not so interested in the subject-matter of the said clauses as to be entitled to be heard against the bill; (6) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard against the bill.

Cripps, Q.C. (for petitioners (1)): The bill proposes to enable the Glasgow and South-Western company to become owners of steamboats in order that they may run them in connection with the ports upon their railway. The petitioners' line runs from Barrmill to Ardrossan. At Barrmill it connects with a line running to Glasgow, and jointly owned by the promoters and the Caledonian company. There is also a line from Glasgow to Ardrossan

in the hands of the promoters, so that the petitioners and the promoters have competitive interests as regards traffic to Ardrossan, and a very important portion of this traffic is that carried from Ardrossan to Arran, and it is in respect of our competitive interest in this traffic that we claim a *locus standi*. The petitioners have a working agreement with the Caledonian company, under which they each receive half profits, and therefore we have both a joint and an independent and separate interest in keeping up the traffic upon our line. There are *minimum* tolls upon the joint Caledonian and Glasgow line as far as Barrmill, but on the competitive line of the promoters there is no such minimum toll, and they can lower their tolls to any extent they like. Though this is a grievance, yet it is not the ground of our *locus standi*, but merely an element in our competition with the promoters. If this bill passes, the promoters will be able to put on steamboats of their own between Ardrossan and Arran, where we are at present in equal competition with them, both companies having competitive railway communication to Ardrossan, and proceeding thence to Arran by independently owned steamboats, which are open to both of us as competitors, and this bill will put us in a worse position by enabling them to become owners of steamboats and to carry traffic in their own hands the whole way from Glasgow to Arran. Supposing there was a line between Ardrossan and Arran open to both of us on equal terms, which is the effect of the present state of things, for there are independent steamboats equally open to us both, if one of the companies was coming to take possession of that line apart from the promotion of any other line, the competing company would surely have a right to be heard.

The CHAIRMAN: Of course, where a company proposes a new line alongside an existing line the existing line has a strong case, but the case of communication by sea is not so strong.

Mr. HEALY: Is it the fact that the Caledonian company do run steamers of their own?

Pope, Q.C. (for promoters): When the bill brought forward by the Caledonian company to enable them to own steamers was rejected, the Caledonian directors formed themselves into a limited liability company to own steamers.

Cripps: I understand the promoters to suggest that the Caledonian company did something of this kind without statutory powers, whereas the promoters are asking for statutory powers, but statutory powers were refused the Caledonian company when they asked for them.

The CHAIRMAN: That is very much to the point. It is set forth in the petition that Parliament has hitherto declined to give such powers, both to the promoters and also to the Caledonian company, and we know Parliament is a little jealous of putting steamers and railways into one hand, and have specially dealt with this by S. O. 162.

Cripps: In all these cases the question is whether the competition is substantial or not. Under clause 5 of the bill the through-fare where the steamboat and railway are in one hand may be less than the sum of the railway fare and the steamboat fare where they are in two separate hands, and thus the promoters may give an undue preference as against their competitors, where the fare for the steamboat and railway are not in the same hands. The promoters might charge people coming by our line 2s. 6d. for the steamboat fare, and nothing at all if they came by their line. Clause 5 of the bill is as follows: "The company may ask, demand and recover for the conveyance of passengers, animals, minerals, goods, merchandise and other things in the steam-vessels so provided and used by them such reasonable fares, rates or sums as they shall think fit. Provided always that the amount of the through fares and rates by railway and steam-vessels may be less than the amount of the combined local fares and rates."

Mr. HEALY: Is there anything in the law that would compel the promoters to give the Caledonian company a through rate by the steamers?

Pope: Yes; it is the general law that if we are carrying by through rates to Arran we must give the passengers by the petitioners' line through rates also.

Cripps: The pier of the promoters at Ardrossan is not the same as that of the petitioners, and I submit that we are entitled to a *locus standi* on the ground of competition.

Saunders, Q.C. (for petitioners (2)): Our case is somewhat similar to that of the Lanarkshire and Ayrshire railway company for we work that line, but we are also interested in the line from Barrmill to Glasgow, which we own jointly with the promoters; and we are interested, not only in the tourist traffic to Arran, but also to places upon the Firth of Clyde below Greenock and Gourock in competition with the promoters, and I submit that in any bill introduced by one of the companies to alter the existing condition of things the other company should be allowed a *locus standi*. Clauses 4, 7 and 8 of the bill give the promoters the largest possible powers with respect to steamers, and are as follows:—4. "The company may

from time to time build, purchase or hire, and may use, maintain and work steam-vessels in connection with their railways for the purpose of carrying on a convenient and efficient communication by means thereof for the conveyance of passengers, animals, minerals, goods, merchandise and things of every description to and from ports and places in the River and Firth of Clyde and the lochs, bays, channels and inlets connected therewith north of a straight line drawn between Corsewall Point and the Mull of Cantyre and may take tolls in respect of such steam-vessels. Provided always that such powers shall not extend or apply to traffic to or from Inverary, Ardrishaig, Tarbert, or Campbelltown." 7. "The company may enter into agreements with any company, body or person being or who may hereafter become proprietors of steam-vessels with reference to the supply, use, maintenance, employment and hiring of any such vessels and the payment or other consideration to be made or given by the company therefor, and such consideration may be in whole or in part by way of subsidy or rebate." 8. "The company may enter into agreements with the several proprietors and lessees of piers and quays at any of the ports and places to and from which the company are by this Act authorised to work and use steam-vessels with reference to the use by the company of any such pier or quay and the accommodation of traffic thereat." We are interested in Irish traffic, and not only in traffic limited to the Firth of Clyde; and although we own no steamers going to either of these particular places, we book through and have arrangements with respect to Ireland and the Firth of Clyde traffic, and, therefore, have a sufficient interest in the subject-matter of the bill to be entitled to be heard. Then clause 5* of the Act seeks to repeal sect. 30 of the Railway Clauses Act, 1863, part 4, as to steamboats, by giving to the promoters power to give an undue preference, in the form of a reduction of rates, to persons travelling by their steamers, and on this ground also we are entitled to be heard, as an alteration of the general law to our detriment. I submit that it is contrary to the principle of Parliament to allow railway companies to own steamers. This right has been refused to us, and it is unfair that we should be prevented from being heard when such an exceptional power is given to a rival company. By clause 8 the promoters seek to make exclusive agreements with the proprietors of piers, and to this we also object, as giving

the promoters an unfair advantage over us as competitors. We share, in common with the Lanarkshire and Ayrshire company, the grievance as to the payment of a *minimum* toll for running over the line jointly owned by ourselves and the promoters between Barrmill and Glasgow.

Pope (in reply): The questions to be decided are, whether the petitioners are entitled to be heard against particular clauses of the bill, because they think such clauses may operate to their disadvantage, or whether they are entitled to be heard on the ground of competition. We are perfectly willing to insert words to make the construction of clause 7 perfectly clear, but we deny that they have any right to a general *locus standi* to discuss whether the promoters are to have the power of owning steamers. This question has been more than once decided in the negative, so far as petitioning railway companies are concerned, and I cite in particular the case of *The Lancashire and Yorkshire, and London and North-Western Railway Companies (Steamboats) Bill*, 1870 (2 Clifford & Stephens, 59) as an authority in my favour so far as these petitioners are concerned. The Caledonian company say that they have now through traffic between Arran and Glasgow, and that the power proposed to be given us by this bill to own steamers will afford a fresh means of competition. This, I submit, is an improvement of existing competition, and comes within the decision of the case just cited. This is not the establishment of a new competition entitling either of the petitioners to be heard. It is no ground for a *locus standi* for the Caledonian company that they asked in a previous session for the same powers and they were refused; the only question is whether our getting these powers will create a new competition. With regard to the Lanarkshire and Ayrshire company, they have no traffic of their own. They are worked by the Caledonian company under an agreement, in perpetuity, at 50 per cent. of the receipts accruing from the Lanarkshire and Ayrshire portion of the route, applying to that portion the rates which the Caledonian company only have the power to make, and though a portion of the Caledonian route is over the joint line of the Glasgow and South-Western company and the Caledonian company, and as to part of that line both companies have to pay for the user of it a *minimum* toll to the joint fund of the Caledonian company and the Glasgow and South-Western company, that *minimum* toll is unaffected by the bill. The Glasgow and South-Western company now have a line of

* For clause 5, *in extenso*, see argument of *Cripps*, Q.C. (*supra*).

their own from Glasgow to Ardrossan, which enables them to divert traffic without passing it over the joint line, and, therefore, without paying toll to the joint fund. This will not be altered by the bill, and it has no reference to steamers at all, and cannot affect the Lanarkshire and Ayrshire at all, and they have no interest in it except a mere share in the through rate, which is absolutely in the control of the Caledonian company.

The CHAIRMAN: We give a *Locus Standi* to the Caledonian Company, limited to Clauses 5, 7 and 8. As regards clause 7 it is proposed that certain words should be introduced, and the petitioners must understand that the limited *locus standi* is not given against the power, *per se*, to hire and use steamboats. The *Locus Standi* of the Lanarkshire and Ayrshire Company is *Disallowed*.

Agents for Petitioners (1), *Martin & Leslie*.

Agents for Petitioners (2), *Grahames, Currey and Spens*.

Petition of (3) THE CLYDE STEAMSHIP OWNERS' ASSOCIATION AND OTHERS.

Railway Company Seeking Steamboat Powers—Joint Petition of Steamship Owners' Association, Individual Steamship Owners, Merchants and Traders—Claim of Association to Represent Trade Interest—Competition.

The bill was also opposed by a steamship owners' association, and by individual steamship owners and firms, a joint petition being presented by them and being also signed by merchants and traders interested in the shipping trade at Glasgow and other places. The promoters admitted the *locus standi* of such of the petitioners as were owners of or interested in steamships trading between Glasgow and places within the limits named in clause 4 of the bill [Power to company to provide and use steam-vessels], to which the promoters were empowered to run steamers of their own, but objected to the *locus standi* of the steamship owners' association, as a body which numbered owners of steamships trading to all parts of the world, and also objected to such of the other petitioners as were not owners of or interested in steamships trading between the places named in

clause 4 of the bill. All the petitioners claimed to be heard, and pointed out that the power contained in clause 7 of the bill [Power to make agreements for supply of steam-vessels] was not limited locally in the same way as that contained in clause 4, although it was contended on behalf of the promoters that it should be so read:

Held, that inasmuch as the steamship owners' association represented various shipping and trade interests in no way confined to the trade affected by the bill, their *locus standi* must be disallowed, and that only those petitioners were entitled to be heard, who were individually interested in the trade affected by the proposals of the bill.

Per Cur.: An association representing a particular trade may be heard, where an association representing a combination of various trades and interests is not entitled to a *locus standi*.

The *locus standi* of the petitioners (3) was objected to on the following grounds: (1) as regards the Clyde steamship owners' association it is not alleged in the petition nor is it the fact that they are the owners of any steam-vessels engaged in the carrying trade on the river and Firth of Clyde, nor is it alleged in the petition that any trade or business represented by the said association will be injuriously affected by the rates and fares proposed to be authorised by the bill, or by the rates and fares already authorised by Acts relating to the railway undertaking of the promoters. So far as the said association represents owners of steam-vessels engaged in the aforesaid carrying trade, all such owners as object to the bill have signed the petition and their *locus standi* is not objected to; (2) the petitioners state that many of them own steam-vessels engaged in the carrying trade on the river and Firth of Clyde, and that others of them who are interested in the general question of the expediency of railway companies owning or using steamers, are owners of steam-vessels engaged for the most part elsewhere, or are merchants interested in the carrying trade, and they complain that the bill would enable the promoters to compete directly and injuriously with many of the petitioners, and that their rights and interests will be injuriously affected by the bill, but except as regards such of the petitioners as are in fact owners of steam-vessels engaged in

the carrying trade on the river and Firth of Clyde between the places which alone the bill seeks power to accommodate, and who are thus providing to the public similar accommodation to that which the bill seeks to empower the promoters to provide, the promoters deny that the rights and interests of the petitioners will be so injuriously affected, or that any such competition will arise or be created under the bill as to entitle them to be heard against the bill. The names of the petitioners whose right to be heard the promoters do not dispute are set out at the foot of this notice. The petition does not allege or disclose any grounds upon which, according to the practice of Parliament, the several persons signing the same (except as aforesaid) are entitled to be heard against the bill. Names of petitioners whose *locus standi* is admitted:—David MacBrayne; the Firth of Clyde Steam Packet Company, Limited; the Campbelltown and Glasgow Steam Packet Joint Stock Company, Limited; the Glasgow and Inverary Steamboat Company.

Worsley-Taylor, Q.C. (for petitioners): The *locus standi* of some of the petitioners is admitted, and others, notably the Clyde steamship owners' association, is objected to.

Pope, Q.C. (for promoters): This very question was raised and decided in the *Caledonian Railway (Steam-Vessels) Bill*, 1889 (Rickards and Michael, 241).

Worsley-Taylor: I submit that under clause 7 of the bill, which is unlimited, every steamship owner upon the Clyde is entitled to be heard; for where there is competition there is a right to a *locus standi*.

Pope: I will concede a *locus standi* as to clause 7.

Worsley-Taylor: The promoters object to the steamship owners' association being heard on the ground that some of the members of the association have signed the petition as individual steamship owners, and their *locus standi* is not objected to; but they say that the association itself, because it represents individuals engaged in other trades, is not entitled to be heard. This is very like the case of the *Manchester, Sheffield and Lincolnshire Railway (Steamboats) Bill*, 1889 (Rickards & Michael, 270), where certain shipowners trading to the ports named in the bill had an admitted *locus standi*, and according to the doctrine of representation they would have been the people to represent the traders; and yet the steamship owners' association, individual traders, and chambers of commerce were all admitted.

Pope: The question is not whether you, as an association, are represented by any body,

but whether you have any *locus standi* at all. We propose to allow the *locus standi* of everybody interested in the trade with which we should compete, but we object to the Clyde steamship owners' association as they do not represent a distinct trade.

Mr. CHANDOS-LEIGH: In previous cases we have laid down a distinction between associations composed exclusively of one class of traders and associations like chambers of commerce, which include traders of all classes. We have held that as a mining association was composed exclusively of one class of traders their claim to a *locus standi* was different from that of a chamber of commerce, whose members include traders of all classes, and are not even necessarily traders at all, and we have allowed the former a *locus standi*. Wherever an association represents a distinct trade it is different to a combination of trades as represented by a chamber of commerce.

Worsley-Taylor: The association is established for the purpose of assisting individuals to fight these questions, and there are several cases where associations of steamship owners have been heard. One case in point is the *Loydon and North-Western Railway Bill*, 1884, on the petition of the *Steamship Owners' Association and Irish Steamship Owners' Association* (3 Clifford & Rickards, 415).

Pope: There the individual traders who might have been heard did not petition, and therefore their interest would have been unrepresented altogether if the steamship owners had not been represented.

Worsley-Taylor: The object is to prevent duplication of petitions, and in this case the steamship owners' association appear on the same petition.

Mr. CHANDOS-LEIGH: When an association represents an exclusive class of traders we have generally let in that association.

Pope (in reply): The only ground on which a steamship owners' association can be allowed a *locus standi* is that the bill will create some new competition with the interests of the association; but here there is nothing of the kind. The association consists of steamship owners trading to all parts of the world, and they are not entitled to a *locus standi* in order to go into questions of general policy. We admit the right of all persons interested in steam-vessels engaged in the carrying trade on the Clyde to be heard, but we object to the *locus standi* of the association, *quâ* association.

The *CHAIRMAN*: The Court feel that there are associations and associations, and taking into consideration how greatly associations

differ from one another, some dealing with a limited trade all of one character, others being very miscellaneous and wide in their character, and without saying that because there is an association they are not to be heard, and looking at the very large interests concerned in this case, some of which are wholly unconnected with the proposal, we do not think the *locus standi* of the Clyde steamship owners' association should be allowed. The parties can settle between themselves which of the petitioners should be retained in the petition, as being individually interested in the trade affected by the bill, and that should not be decided on too narrow grounds.

Pope : We are quite content that the names to be retained in the petition should be settled by the Speaker's Counsel.

[*Worsley-Taylor assented to this arrangement.*]

Locus Standi of the Clyde Steamship Owners' Association *Disallowed*; *Locus Standi* of the other Petitioners *Disallowed*, except of such of them as were individually interested in the trade effected by the bill. The names of such Petitioners to be settled by the Speaker's Counsel.

Agents for Petitioners, *Martin & Leslie*.

Agents for Bill, *Sherwood & Co.*

GLASGOW SOUTH SUBURBAN RAILWAY BILL.

2nd March, 1891.—(*Before Mr. PARKER, M.P., Chairman; &c.*)

The *Locus Standi* of the Corporation of Glasgow was objected to.

The case was postponed by consent to March 9th, when the objection to the petitioners' *locus standi* was withdrawn.

Agents for Petitioners, *Martin & Leslie*.

Agents for Bill, *Durnford & Co.*

GREAT WESTERN RAILWAY BILL.

Petition of (1) THE TAFF VALE RAILWAY COMPANY.

6th July, 1891.—(*Before Mr. PARKER, M.P., Chairman; Mr. SHIRES WILL, Q.C., M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Locus—Revival of Powers to make Branch Railway—Conversion of Goods into Passenger Railway—Claim to Extend Running Powers over Main Line of Promoters to Branch Railway—Extension of Time for Railway Crossing Land of Petitioners—"Post Case," London and North-Western Railway Bill, 1868 (1 Clifford and Stephens, 62), Discussed—S. O. 133 [In what cases Railway Companies to be heard], how far entitling Petitioners to General or Limited Locus Standi—Practice.

This was an omnibus bill, by clauses 9 and 29 of which the promoters took power to acquire compulsorily certain land belonging to the Taff Vale railway company. The promoters conceded the company a limited *locus standi* against these clauses, but the petitioners claimed to be heard generally on their petition, which dealt with other matters, including the revival of powers conferred upon the promoters by the *Great Western Railway Act, 1880*, to complete, as a double line, a certain branch railway, and to take the necessary lands for that purpose, and to enlarge the said branch railway from a single goods line, as it at present existed, and convert it into a passenger line. The petitioners claimed to be heard as to this proposal, in order to claim running powers which they already possessed over the promoters' main line in this locality, over this branch railway also; and they further claimed to be heard on their petition to object to an extension of time being granted to the promoters by the bill to construct a railway authorised by the *Great Western Railway (No. 2), 1882*. The petitioners admitted that as to these matters their right to a *locus standi* could not be sustained, in accordance with the usual practice, but claimed that as landowners they were entitled to be heard generally on their petition, and relied on the decision in the "post case" (*London and North-Western Railway Bill, 1868, 1 Clifford and Stephens, 62*), and other decisions following it, as giving the Court no discretion in the matter but to follow their usual practice, which could, it was argued, only be properly altered by the making of a new

Omnibus Bill—Railway Company as Landowners—Lands Compulsorily taken—Claim to General

Standing Order. Counsel for the promoters contended that since the alteration of S. O. 133 [In what cases railway companies to be heard] to its present form it was in the discretion of the Court to allow the petitioners a general or limited *locus standi*, and that it would be contrary to practice, that they should be heard to ask for an extension of running powers to the branch railway or against the proposed extension of time :

Held, that the petitioners were entitled to be heard generally on their petition, the Court expressly stating that in giving this decision they did not intend in any way to influence the Committee on the bill in determining how far the interests of the petitioners were materially affected by the provisions of the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the promoters admit the right of the petitioners to be heard against so much of clauses 9 and 29 of the bill as relates to the stopping up of the portion of road and the making of the new road in the parish of Canton described in clause 9 of the bill; (2) the only other provisions of the bill to which the petitioners object in their petition are those contained in clauses 26, 27, and 31; (3) clauses 26 and 27 authorise a revival of powers and extension of the time for the acquisition of lands for, and for the construction of a certain railway known as the riverside branch, so far as may be necessary for converting it into a passenger line, but it is not alleged in the petition, nor is it a fact, that any lands or property of the petitioners will or can be taken or interfered with under the powers or for the purpose of those clauses; (4) the petitioners are not entitled to be heard against the bill on the ground that they already have running powers over a portion of the promoters' main line of railway, and desire to have these powers extended to the riverside branch or on the ground that the Barry dock and railways company are by another bill seeking running powers over the riverside branch; (5) it is not alleged in the petition that any new competition between the petitioners and the promoters will arise under the powers of clauses 26 and 27 of the bill; (6) by clause 31 of the bill it is proposed to extend the time for the construction of a

railway authorised in 1882 connecting the promoters' Ely Valley railway and the petitioners' railway at Porth, but that clause neither confers nor extends any powers for acquiring any lands or property of the petitioners, and the petitioners are not entitled to be heard in respect of the extension of the time for the construction of works; (7) even if the allegations contained in paragraph 12 of the petition are true, which the promoters do not admit, they disclose no grounds entitling the petitioners to be heard against the bill. The matters complained of in paragraph 12 are matters of past legislation, and no new competition between the petitioners and the promoters will or can arise under the powers of clause 31 of the bill; (8) except to the extent admitted by paragraph 1 of this notice the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard against the bill.

Pope, Q.C. (for petitioners (1)): We are in the position of landowners as regards a portion of the bill which proposes by clauses 26 and 27 to revive powers given by the Great Western Railway Act, 1889, to make a branch railway, called the riverside branch, from the South Wales line almost down to the Bute docks at Cardiff, and to convert that railway which has been constructed as a goods line into a passenger line. The House of Lords have compelled the promoters to widen a particular road as provided in clauses 9 and 29 of the bill, and in carrying out this the promoters must take the land and property of the petitioners. In the "post case," (*London and North-Western Railway Bill*, 1868, 1 Clifford & Stephens, 62), it was decided that you could not, even in an omnibus bill, which I admit this is, limit the right of a landowner to be heard, and that he would only be limited by the Committee to the allegations in his petition. In the year 1872 S. O. 133 was passed, which was discretionary, and in the same year in the *Caledonian Railway (Additional Powers) Bill*, 1872 (2 Clifford and Stephens, 256), the construction put upon it was that, notwithstanding the discretion given to this Court by that Order, if a bill takes any part of the lands of a railway company, this Court will treat the railway company exactly as if it were a private landowner, but where there is a provision for running engines or carriages upon or granting other facilities over the railway of the petitioning company this Court will exercise its discretion and only allow the petitioning company a *locus standi* against those provisions.

Mr. SHIRESS WILL: That case was cited and followed in the case of the *East and West Yorkshire Union Railway Bill*, 1886 (Rickards* and Michael, 98). The one thing which I understand is absolutely settled now is that a railway company, if it owns land, is no less a landowner than if it were not a railway company, and that it has all the incidents and consequences of a landowner as regards *locus standi*; but I have never been able to understand if a railway company chooses to put in an omnibus bill half-a-dozen different things totally separate and distinct from one another, one of which may be the construction of works at Preston and another the shutting up of a footpath at Willesden, why a man at Preston should have a *locus standi* against the shutting up of the footpath at Willesden.

Mr. CHANDOS-LEIGH: I quite agree with that.

Pope: It has been the uniform practice of Parliament to regard a landowner's interest as one which entitles him to object in any way he can to any interference with his property, and if he can make it difficult for the promoters of an omnibus bill to obtain their bill, one of the provisions of which is a power to take his land, he is entitled to take that position. The right of this Court to give a landowner an unlimited *locus standi* does not interfere with the right of the Committee to limit him to the four corners of his petition.

The CHAIRMAN: I think the real question for the Court is whether they should apply to the House to pass a new Standing Order, which should say that this traditional right of a landowner should be limited to the particular piece of the line for the construction of which compulsory powers were taken over his land.

Pope: Yes; the only way to deal with such cases as this of a claim of landowners to be heard against an omnibus bill, if it is found that inconvenience results in such cases, is not by the Court exercising a discretion and saying that the established practice is unreasonable, but by an application to the House to modify that practice by a Standing Order.

The CHAIRMAN: Possibly one ground for the present practice is that it acts as a discouragement to omnibus bills.

Pope: We submit that we are entitled to be heard on other grounds, but we prefer to resort to this landowner's claim, which gives us an undoubted *locus standi*.

Mr. CHANDOS-LEIGH: Have we ever refused a *locus standi* to a railway company against an omnibus bill if any lands are taken?

Pope: As far as I can remember never where there has been actual land taken, and not

merely interfered with, for the purpose of making a junction for example.

The CHAIRMAN: We represent not merely the Standing Orders of Parliament, but to a certain extent the mind of Parliament, and therefore, if we had reason to believe that the mind of the House on appeal from this Court would be in a certain direction, we might take leave to set aside decisions of ancient date.

Saunders, Q.C. (for promoters): I concede the petitioners a limited *locus* against clauses 9 and 29 of the bill. With regard to their claim to a general *locus*, the decisions up to the present time seem to have been that the "post case" should be followed even in the case of omnibus bills, there always being this limitation—that the petitioning company is confined within the four corners of their petition; but the result of this is that, in order to give a *locus standi* against any part of a bill, the petitioners need only enlarge the limits of the four corners of their petition.

The CHAIRMAN: I think the Committee would interpose a check on the petitioning company going into all sorts of matters that did not concern it.

Saunders: It seems to me that it would be a complete answer for the petitioning company to say that the *Locus Standi* Court, who deal with these matters, had given them a general *locus standi*, and the Committee could not prevent them going into all matters alleged in their petition.

Pope: In the *East and West Yorkshire Bill*, which was an extension of time bill, the North-Eastern company obtained a general *locus standi*, but the Committee refused to allow them to go into the allegations of their petition, which were entirely aside from their rights and wrongs as landowners.

Saunders: A great deal of discretion is vested in the Court by many Standing Orders, but if a Standing Order is so peremptory that the Court feel they are bound by it and by their previous decisions, I agree that the right course would be to go to the House itself for the purpose of getting the Standing Order altered. But that does not apply to a case of this kind, where the Standing Order is not peremptory.

The CHAIRMAN: You distinguish between thoroughly established practice and the Standing Order?

Saunders: I do. In 1868 the Standing Order was imperative, but it was afterwards altered and was made discretionary, and remains so now. It gives a discretion to the Court as to whether the petitioners should be heard against

the preamble of a bill or only against certain provisions in a bill.

MR. SHIRESS WILL: We have construed the Standing Order in a variety of cases in this way—where a railway company owns land, and that land is proposed to be actually taken, we do not limit their *locus standi*, and we give them the same general *locus standi* that we give a private individual who happened to hold land.

MR. CHANDOS-LEIGH: But where one railway crosses another or crosses a bridge, we do limit the *locus standi* where the land is not actually taken.

SAUNDERS: I agree that is the distinction, but the cases do not say that the Court is imperatively bound to give a railway company a general *locus standi* under the Standing Order. I do not think it has ever been actually decided that even a private owner would be entitled to a general *locus standi* against an omnibus bill relating to different objects in every part of the country.

MR. SHIRESS WILL: That is the point. We have always assumed this "post case" to be law, but if it is examined it will be found that it was not necessary for the purposes of that case to decide the point, but the Court then said that they had theretofore had occasion to consider the matter, and that the practice was settled, and since then we have gone under the impression that it was the settled practice of the Court.

SAUNDERS: The Standing Order was imperative when that case was decided.

THE CHAIRMAN: In the *Bridgewater Railway Bill*, 1886 (Rickards & Michael, 89), this matter was discussed, and in the *Caledonian Railway*, (*Additional Powers Bill*), 1872, on the petition of the *North British Railway Company* (2 Clifford and Stephens, 256), the late Speaker's Counsel said it was competent to read S. O. 133 so as to say, we must give a *locus standi* if the land of the railway company is to be taken, but not necessarily if only facilities are to be given.

SAUNDERS: It is common ground that a petitioner cannot go outside of his petition, but what I ask is, unless you are absolutely tied by the practice and are obliged to give a general *locus standi*, that you shall not read the Standing Order as obliging you to give a *locus standi* extending to the whole of the bill.

MR. SHIRESS WILL: It may be that the reason why this doctrine has prevailed so long is that it has been considered by the Court that the petitioning company would be limited by the Committee.

SAUNDERS: Supposing the promoters deal first with the matter which directly affects the petitioner, and suppose we dispose of that,

there being nothing left in the bill on which the petitioners could have a right to a *locus standi*, nevertheless they would, if you give them a general *locus*, be able to oppose with reference to matters which in no way concerned them. Moreover, if you give them a general *locus standi* against the bill, you will be giving a *locus standi* against an extension of time, and to claim running powers over a new railway on the ground that they already possess them over an existing railway, which is distinctly contrary to your practice.

THE CHAIRMAN: We grant a general *locus standi* in this case, but we wish it to be recorded that we do not intend, in coming to this decision, to influence the Committee in their judgment as to what may or may not be considered material by them in dealing with the interests of the petitioners as affected by the bill. We leave that to the Committee to judge.

Locus Standi Allowed.

Agents for Petitioners, Rees & Frere.

Petition of (2) THE BARRY DOCKS AND RAILWAY COMPANY.

Same Land Scheduled by Bills of Promoters and Petitioners—Land required for New Railway and for Extension of Authorised Railway—Claim of Petitioners to be heard against both Powers of Bill—Insufficiency of Allegations in Petition—Practice—Claim of Petitioners to obtain Protective Clauses in Bill, and Power to make Railway on Default by Promoters—Absence of Injury caused by Bill.

Clause 4 of the bill authorised the promoters to take certain land for the construction of Railway No. 2 authorised by the bill, power to take which was also contained in a bill promoted by the petitioners in the present session of Parliament. The petition stated that the land in question was required for the construction of Railway No. 4 authorised by the bill of the petitioners, but the deposited plans showed that some of the land was also required for the completion and doubling of a branch railway authorised by the Great Western Railway Act, 1880. The petitioners, upon this, claimed to be heard against the completion of the branch

railway, which was authorised by clauses 26 and 27 of the bill :

Held, that, inasmuch as the allegations of the petition failed to mention that the land in question was required for the completion of the branch railway, the *locus standi* of the petitioners must be confined to clause 4 so far as it affected the land required for the construction of Railway No. 2 of the bill.

The petitioners also claimed to be heard against clauses 26 and 27 of the bill for the completion of the branch railway, on the general ground that it was a railway intended to accommodate traffic coming from their own line, and in which they were therefore interested, and because their own bill of the present session contained powers for them to complete it in default of its completion by the promoters. They also alleged competition by it, if it were authorised to be completed by the promoters, and claimed to be heard to obtain clauses for their protection, and generally :

Held, that as the powers contained in this part of the bill did not, in themselves, injuriously affect the petitioners, they could not be heard to obtain the insertion of provisions in the bill for their benefit.

The *locus standi* of the petitioners was objected to on the following grounds: (1) it is not alleged in the petition, nor is it the fact, that any lands or property of the petitioners will or can be taken or interfered with under the powers of the bill. The promoters admit the right of the petitioners to be heard against clause 4 of the bill so far as that clause authorises the promoters to acquire lands which the petitioners are also seeking power to acquire by their bill of the present session; (3) the only other provisions of the bill referred to in the petition are those contained in clauses 26 and 27, by which it is sought to revive the powers and extend the time for the acquisition of lands for and for the construction of the railway known as the riverside branch so far as necessary to convert it into a passenger line, but it is not alleged in the petition, nor is it the fact, that any lands or property of the petitioners are affected by such revival of powers or extension of time; (4) the petitioners

are not entitled to be heard against the said clauses on the ground that they are by their bill seeking powers relative to the conversion of the riverside branch into a passenger line, or on the ground of apprehension that the powers sought by the said clauses may be allowed to remain in abeyance; (5) except to the extent admitted by paragraph 2 of this notice, the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard against the bill.

Cripps, Q.C. (for petitioners): As regards clause 4 of the bill our *locus standi* is conceded, because we are seeking compulsory powers over the same land for Railway No. 4 authorised by our *Barry Docks and Railway Bill* of this session. I submit we ought equally to have a *locus standi* upon clause 4 of the bill against the revival of powers for the riverside branch railway contained in clauses 26 and 27 of the bill, because we are both seeking compulsory powers over some of this land, we for our Railway No. 4, and they for a portion of their riverside branch railway, as is apparent by reference to the deposited plans.

Saunders, Q.C. (for promoters): This is not in the petition; it is an entirely new point of which I have had no notice.

Cripps: In our petition we point out first that we both take the same land, and then we show what our case on the merits really would be. We do not oppose the making of the riverside branch, but we are seeking to have it carried out on such terms as will protect us and our traffic. Having stated what we have in paragraph 7 of the petition, it was for the promoters to look at the deposited plan.

MR. SHIRES WILL: You say they were bound to look at the deposited plan in order to understand your petition, so the petition does give them notice.

Cripps: Yes.

THE CHAIRMAN: You say that the words at the end of paragraph 7 "railway proposed by their bill" means the riverside branch, which they are to revive, as well as the new railway they are to construct.

Cripps: Yes; when you look at this paragraph in connection with the deposited plan, we have a clear *locus standi*, but if this is not thought sufficient I will go into the general reasons why we ask for a *locus standi* in respect of the riverside branch.

Saunders: I submit from the wording of the petition that it is clear it was never intended to refer to anything except the limitation of our power of taking land which the promoters

require for Railway No. 2 of the bill. The paragraphs of the petition relating to this matter are paragraphs 4 to 8, and are as follows: 4. "By clause 4 of the bill it is proposed to authorise the company to make and maintain, in the lines and according to the levels shown on the deposited plans and sections, the following railway: 1. A railway (on the deposited plans described as Railway No. 2) seven chains and thirty links in length, to be wholly situate in the parish of St. Mary the Virgin, Cardiff, in the county of Glamorgan, commencing by a junction with the branch railway of the company to the River Taff, at or near the termination thereof, and terminating on the north side of Corporation road at a point about four chains westward of the bridge carrying that road over the Glamorganshire canal. 5. Your petitioners are promoting a bill in the present session which is now pending in your honourable house, intitled, 'An Act to enable the Barry dock and railways company to construct new railways, and for other purposes.' 6. Among the railways proposed to be constructed is a Railway No. 4, 8·5 chains or thereabouts in length, commencing by a junction with the branch railway of the Great Western railway company in the said Act described, and terminating at the north side of Corporation road, at a point 55 yards or thereabouts to the westward of the western end of the bridge carrying Corporation road over the Glamorganshire canal. 7. For the purpose of constructing the said Railway No. 4 your petitioners seek power by the said bill to acquire certain lands which are delineated on the deposited plans and described in the deposited books of reference, mentioned in their said bill, and powers are also sought by the Great Western railway company for the construction of the railway proposed by their bill, to purchase and acquire the same lands. 8. The construction of the Great Western railway company's proposed railway and your petitioners' proposed railway are not inconsistent, but it is absolutely indispensable to your petitioners' scheme that the powers of the Great Western company to take land for the purposes of the said Railway No. 2 should be limited, so as to leave a sufficient quantity of land (which is quite practicable) for the construction of your petitioners' railway."

The CHAIRMAN: The Court think that the petition does not sufficiently allege that the lands, which the petitioners are seeking powers to acquire by their own bill this session, are the same lands as those sought to be acquired for the completion of the promoters' riverside

branch, to give the petitioners a *locus standi* on that ground against the completion of the riverside branch.

Cripps: I will now proceed with the general grounds upon which I submit I am entitled to a *locus standi* in connection with the revival of powers as to widening the riverside branch and turning it into a passenger line, both on the ground of interest in the line, and also on the ground of competition. Clauses 26 and 27 are as follows:—(Clause 26.) "The powers granted by the Great Western Railway Act, 1880, for the purchase of lands for the railway fourthly described in and authorised by that Act, which railway is hereinafter in this Act referred to as the riverside branch, so far as such powers have not been exercised and may be required for the purpose of enabling the company to complete and open the said railway as a passenger railway with a double line of rails thereon, and the necessary sidings, works and conveniences connected therewith, are hereby revived and continued, and may be exercised for the period of three years from the passing of this Act." (Clause 27.) "The powers granted by the Great Western Railway Act, 1880, for the construction of the riverside branch, so far as such powers have not been exercised and may be required for the purpose of enabling the company to complete and open the said railway as a passenger railway with a double line of rails thereon, and the necessary sidings, works and conveniences connected therewith, are hereby revived and continued and may be exercised for the period of five years from the passing of this Act." This scheme though in two parts is all one line, and cannot be separately discussed or considered, and we merely ask that the powers proposed by this bill shall be exercised in accordance with proper protection to our rights. In our bill of this session we have inserted a provision, that if the promoters do not complete the riverside branch railway, it shall be lawful for us to do so.

Saunders (in reply): The petitioners have a bill before Parliament, in which they are asking for the same powers as they seek to obtain by their petition against this bill. We should not be harassed twice in the same session by different procedure. The general principle of *locus standi* is that petitioners shall not be heard merely for the purpose of getting some advantages conferred upon them by the bill, but for the purpose of meeting some injury which will be caused to them by the provisions of the bill. There is an entire absence of any allegation of injury in their petition, and they therefore are not entitled to be heard.

The CHAIRMAN: The *Locus Standi* is Dis-
allowed, except as against clause 4 of the bill.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Sherwood & Co.

HANDSWORTH (STAFFORD) RECTORY BILL. [H.L.]

Petition of INHABITANTS AND CHURCHWARDENS
OF HOLY TRINITY, HANDSWORTH.

6th July, 1891.—(Before Mr. PARKER, M.P.,
Chairman; Mr. SHIRESS WILL, Q.C., M.P.;
The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr.
BONHAM-CARTER.)

*Transfer of Advowson of Parish, and Re-endow-
ment of Rectory—Ecclesiastical Commissioners
—Inhabitants and Churchwardens of Ecclesi-
astical District formed from Parish—Proportion
of Tithe-Rent already paid to Incumbent of
District—Claim to be heard against Bill to
obtain Payment of Larger Sum—Status of
Petitioners not affected by Bill.*

This was a bill for vesting in the Ecclesiastical Commissioners the endowments of the rectory of Handsworth, in Staffordshire, and for the re-endowment of the rectory and the transfer of the advowson to the See of Lichfield, and for the endowment or augmentation of new districts within the parish of Handsworth. Four ecclesiastical districts or parishes had been already formed from the parish of Handsworth, and the tithe-rent charge of the parish had been charged with the payment of different annual sums to the incumbents of the said ecclesiastical parishes respectively. The petition claimed to be that of the inhabitants, signing by one of their body deputed to do so at a public meeting, and the churchwardens of one of the four ecclesiastical parishes already formed out of the mother parish, and the petitioners claimed that, their district having largely increased in importance and population, a larger annual sum should be allocated to the incumbent of their parish, and that as the bill dealt with the advowson and income of the mother parish, they should be heard to

obtain a larger share of the income. It was objected on behalf of the promoters that the bill in no way dealt with or affected the present payment to the incumbent of the petitioners' parish, and that they had no concern in the transfer of the advowson of the mother parish:

Held, that the petitioners were not affected by the bill and could not be heard against it.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege or show, nor is it the fact, that any land, house property, right or interest of the petitioners, will be, or can be taken or affected under the powers of the bill, or in consequence of the execution thereof; (2) the petitioners do not complain of, nor is the petition directed against any provision contained in the bill; (3) the ecclesiastical district or parish of Holy Trinity, Handsworth, was some time since formed out of the parish of Handsworth, the tithe-rent charge of the rectory whereof is now charged with a yearly payment to the incumbent of the said ecclesiastical district or parish, but the bill in no way interferes with or affects that charge; (4) the owner of the advowson of the rectory of Handsworth is competent to sell and dispose of the same, and the fact that a contract for the sale of the advowson to the Lord Bishop of Lichfield is proposed to be confirmed by the bill, and that provision is made by the bill for the conveyance of the advowson to and its vesting in the Bishop, as part of the possession of his See, does not entitle the petitioners to be heard against the bill, or to ask (as the petition in effect prays) that any larger share of the endowments of the rectory should be allocated to the ecclesiastical district or parish of Holy Trinity, than that district or parish is now entitled to; (5) the petitioners are not the proper parties to raise any question as to the endowments of, or the payments made or to be made to the incumbent of the ecclesiastical district or parish of Holy Trinity, and such question (if it could properly be raised upon the bill, which the promoters deny) should be raised, not by the petitioners, but by the incumbent; (6) the petition does not allege or show, nor is it the fact, that the ecclesiastical district or parish of Holy Trinity is, or can be, injuriously affected by the bill; (7) the promoters deny that the petition has been approved or authorised at any meeting of the inhabitants of the said ecclesiastical district or parish duly convened and held, or that Mr. A. J.

Reynolds, who purports to have signed the petition on behalf of and by direction of the said inhabitants, was duly authorised to sign the petition on behalf of the said inhabitants; (8) the bill does not contain any provision affecting the petitioners or the said ecclesiastical district or parish, or the inhabitants thereof; (9) the petition does not allege or show that the petitioners or the said inhabitants have, nor have they, or any of them, in fact, any such interest in the objects and provisions of the bill as entitles the petitioners to be heard against it.

Pembroke Stephens, Q.C. (for petitioners): The bill authorises the Ecclesiastical Commissioners to apply a portion of their funds to the purchase of the advowson of the rectory of Handsworth, and to invest the advowson in the See of Lichfield, and provides for the endowment or augmentation of new districts within the parish of Handsworth. The petitioners represent one of four parishes into which the old parish of Handsworth has been divided. When the division was made, the sum of £50 a year out of the parish funds was allocated to the incumbent of the petitioners' parish. The value of land in the parish has greatly increased of late years, and within the last ten years the population of the petitioners' parish has almost doubled itself, having risen from 4,679 to 7,429. Under these circumstances we submit that, as this is a bill which will alter the existing arrangements in the parish of Handsworth, and particularly as the Commissioners have chosen to come to Parliament, we are entitled to a *locus standi*. The promoters have recognised our rights by naming us in the bill, and we wish to be before Parliament to see that proper provisions are made for that part of the old parish of Handsworth which we represent.

Saunders, Q.C. (for promoters): The petition does not allege that there was a vestry meeting, and, moreover, the incumbent, if any person at all, is the proper person to raise this question.

Pembroke Stephens: The incumbent is dead, and if he had signed it would now be said that the petition must fall to the ground.

The CHAIRMAN: Was the incumbent living at the time of the meeting?

Saunders: Yes; and in fact he was favourable to the scheme.

Mr. SHIRESS WILL: How are the petitioners hurt by this scheme at all? It merely purposes to deal with something they have no concern in, namely, the advowson, which is to be bought, and the income distributed in a certain way, and it also provides that if there

is any surplus, the petitioners may have a chance of getting some.

Pembroke Stephens: If the advowson had been bought by a private person we should have been able to bring before him the change that had taken place in our district of late years, and possibly he might have done something for us, whereas now it is proposed to deal with the matter in an Act of Parliament, of which the provisions will be fixed for all time, and we submit that we ought to be allowed to be before the Committee when this matter is gone into. The income is proposed by the bill to be distributed in a way different to what it now is, and we are one of the class interested in such distribution.

The CHAIRMAN: It would be different if you represented the whole parish, but you only represent one district out of four.

Pembroke Stephens: In the Stoke-upon-Trent Rectory Act, 1889, which was a bill very similar to this, I was for one of the outside parishes, and the House of Lords took our view that it was something to us that there was a distinct re-arrangement of the subject-matter.

Mr. CHANDOS-LEIGH: It was not opposed in the House; it went to a Hybrid Committee.

Saunders (in reply): The difference between the Stoke-upon-Trent case and this is that the actual funds were dealt with and the appointment of them to several parishes by the Act itself.

Mr. CHANDOS-LEIGH: There was an accumulated fund in the Stoke-upon-Trent case amounting to many thousands, and it was to be apportioned by the bill between different districts, and one parish said they did not get enough.

The CHAIRMAN: We need not trouble Mr. Saunders any further. The *Locus Standi* is Disallowed.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Rees & Frere.*

KEIGHLEY CORPORATION BILL.

Petition of THE LOCAL BOARD OF HEALTH FOR THE DISTRICT OF HAMWORTH, IN THE COUNTY OF YORK.

9th March, 1891.—(*Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.*)

Extension of Time for Construction of Works—Local Board of Neighbouring District, having Waterworks of their own—District within Promoters' Limits of Supply—Provision in Original Act that Promoters should not supply within Petitioners' District without their Consent—Claim of Petitioners to Watershed appropriated by Promoters under previous Acts—Growth of Population—Necessity for further Supply to Petitioners' District—S. O. 134A [Local Authorities to have Locus Standi against Lighting and Water Bills] inapplicable—Public Health Act, 1875, sect. 52—Folkestone, &c., Tramways Bill, 1891 (supra, p. 102), cited.

The bill extended the time for the construction of certain waterworks authorised by the Keighley Waterworks Extension and Improvement Act, 1869, for a further period of ten years. The petitioners were the sanitary authority of a neighbouring district, and claimed to be heard against the proposed extension of time and the bill generally. The promoters conceded them a *locus standi* against the bill, so far as certain additional works proposed by the bill involved interference with their roads and pipes, and also as a sanitary authority against a provision in the bill (clause 18), whereby the promoters sought power to make agreements with mill-owners on a river and streams flowing through the petitioners' district to give the mill-owners a money compensation, instead of compensation water as provided by the promoters' Act of 1869; but they denied the right of the petitioners to be heard against the proposed extension of time for construction of works. The petitioners' district was within the promoters' limits of supply; but the former had obtained the insertion of a clause in the promoters' Act of 1869 prohibiting the latter from supplying water within

their district, unless called upon to do so by them, as they (the petitioners) had waterworks of their own, and in 1869 believed that they could continue to give an adequate supply of water to their own district. Since that date, however, the promoters having in the meantime twice obtained from Parliament an extension of time for construction of works, the petitioners' district had largely increased in population, and they claimed under the altered circumstances to be heard against a further extension of time, in which the promoters might impound streams and appropriate sources of water supply, which the petitioners claimed as naturally belonging to their own district. The promoters pointed out that it would still be competent for the petitioners to demand a supply of water from them, the provision in the Act of 1869 being unaffected by the bill, and argued that the petitioners were not entitled to be heard against the proposed extension of time according to previous decisions:

Held, however, that under the alteration of circumstances that had taken place since the passing of the promoters' Act of 1869, the petitioners were entitled to be heard generally against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) no lands, waters, water mains, or works or other property of the petitioners will be taken or interfered with under the powers of the bill, nor will any right or interest of the petitioners be prejudicially affected thereby; (2) the petitioners do not allege, nor is it the fact, that their district will, or may be, injuriously affected by the provisions of the bill; (3) the bill does not propose to confer any new or greater powers upon the promoters with reference to the taking and appropriation of streams and waters than they already possess, and in regard to the proposed extension of time for the construction of certain reservoirs and works, your petitioners submit that it is contrary to the practice of Parliament to allow a *locus standi* on a question of extension of time for the construction of works; (4) it appears from the petition, that the petitioners are entirely independent of the pro-

moters in regard to the water supply of their district, the promoters being in fact expressly prohibited from supplying water within the petitioners' district without their consent in writing; (5) the promoters deny that the petitioners cannot obtain a further supply of water without taking the streams appropriated to them; (6) the new works proposed to be authorised by the bill consist of a deviation of part of the authorised pipe line, and the construction of filter beds, but these will not enable the promoters to take or store any larger quantity of water than they are authorised to take and store, and the construction of such new works will in no way interfere with the petitioners obtaining a suitable supply of water within a reasonable distance; (7) with regard to the allegation contained in paragraph 18 of the petition, the promoters submit that the petitioners' roads, lanes, pipes and water courses, will be sufficiently protected under the bill and particularly by the Waterworks Clauses Act, 1847, which is incorporated therewith; (8) the petition does not disclose any ground of objection to the bill which, according to the practice of Parliament, entitle the petitioners to be heard against the bill.

Balfour Browne, Q.C. (for petitioners): I claim a *locus standi* under the decision of the Court in the case of the *Nelson Corporation Bill* of this Session (Rickards & Saunders, *infra*, p. 147).

Bidder, Q.C. (for promoters): We concede you a *locus standi* as far as interference with your roads and pipes are concerned, and against clause 16, which provides for the corporation making agreements with mill-owners on a river and streams flowing through their district in certain events to give them a money compensation in lieu of compensation water from a reservoir to be constructed under the Keighley Waterworks Extension and Improvement Act, 1869.

Balfour Browne: The promoters ask for an extension of time to construct their reservoirs, and it would be an extreme hardship upon us if we were not heard against that extension of time. The corporation obtained powers to construct these works in 1869, twenty-two years ago, and these powers have since been twice extended and are now about to expire in 1892. Haworth has since grown rapidly, and some further water scheme for our district is absolutely necessary. The water of Sladen Beck, which would feed these reservoirs is our natural supply, and when the time for the construction of the works by the Keighley corporation expires, there will be no parlia-

mentary powers over that water, and we could go there for our supply.

Mr. CHANDOS-LEIGH: Sect. 52 of the Public Health Act applies to private companies; does it not also apply to Local Boards?

Balfour Browne: Yes, I think it does; moreover this is the only stream to which we can go.

The CHAIRMAN: This is somewhat analogous to the case of the *Folkstone, Sandgate and Hythe Tramways Bill*, 1891 (Rickards and Saunders, *supra*, p. 102). You say new circumstances have arisen; let Parliament judge afresh before it extends the existing powers.

Bidder: I wish to call attention to the *Barrow-in-Furness Corporation Bill*, 1881 (3 Clifford & Rickards, 4).

Balfour Browne: The difference between that case and the present is that there the local board got a priority of supply as a condition of allowing the reservoirs to be made, whereas we got a clause put into the Act of the corporation, saying that they were not to supply water within our limits without our consent.

The CHAIRMAN: As a matter of fact is your present water supply insufficient for you?

Balfour Browne: Yes, we derive it from a spring which we intercept, and it is insufficient at the present time.

Bidder (in reply): The petitioners are within our limits of supply, and can be supplied with water at the same rates as others in our district of supply the moment they give us notice to supply them. This is a much weaker case than that of the petitioners against the *Barrow-in-Furness Corporation Bill*. There the petitioners were an outside district, which had a certain claim for a supply, and they came against an extension of time for completing the reservoirs and wanted a *locus standi* to ask Parliament to let the powers run out in order that they might come and appropriate the watershed; but it was refused, because the question as to extension had nothing to do with them, and was not put in for the benefit of outsiders. This case is not distinguishable from that. The petitioners have no right to a *locus standi*, merely because they would like this watershed; the foundation of *locus standi* is that there is prejudice by something contained in the bill.

The CHAIRMAN: The difference between this case and that of the *Barrow-in-Furness Corporation Bill*, is that the Ulverston local board had secured priority for taking the water, but the petitioners here on the contrary wanted to preserve their independence, and not to be supplied by the corporation of Keighley at all.

Bidder: It is not alleged that anything in this bill infringes on their independence.

The CHAIRMAN: They want to do without your water, and their population is growing, and now that an extension of time is being asked for, they say let Parliament consider afresh whether we should not have our natural watershed.

Bidder: Supposing we were coming for the first time to take this watershed, would you let in an outside population who have no property rights, upon the plea that they would be likely to want the water, and would like to come themselves to Parliament at some future time?

The CHAIRMAN: I should have thought so, if the neighbouring people were naturally dependent on the same watershed, and wished to say we will come with a bill to take this water next year.

Bidder: I think not. If two townships each came with a bill to take the same water, then you would hear the one against the other, but you would not hear one against the other simply on the ground that their population was growing, and that they would like some day to come with a bill to take the same water. According to the case of the *Romford Canal Bill*, 1880 (2 Clifford & Rickards, 305), and the *Barrow-in-Furness Corporation* case, the question of extension of time for completion of works is purely a matter between us and Parliament.

The CHAIRMAN: You were given the power to take this watershed and make these reservoirs under certain circumstances, and a considerable difference of circumstances may have arisen since that time. Do not the petitioners come under S. O. 134A? This is a bill relating to the water supply of their district of which they are the local authority, and you have the power to supply them?

Bidder: I think not. S. O. 134A says the bill must relate to the water supply of the petitioners' district. The petitioners here are in our district, and this bill does not relate to the water supply of their district.

The CHAIRMAN: The bill extends the time for making works for the water supply of their district amongst others, if they choose to take it.

MR. SHIRESS WILL: I should not myself give a *locus standi* upon that ground.

MR. CHANDOS-LEIGH: I do not think we can stretch the Standing Order quite so far as that.

The CHAIRMAN: The *Locus Standi* of the Petitioners in this case is *Allowed*.

Agents for Petitioners, *W. & W. M. Bell*.

Agents for Bill, *Sharpe, Parker, Pritchard and Sharpe*.

LANCASHIRE, DERBYSHIRE AND EAST COAST RAILWAY BILL.

Petition of JOHN PRESTWICH.

9th March, 1891.—(Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

W. M. Bell, parliamentary agent (for promoters), stated that clauses were being prepared which might have the effect of satisfying the petitioner, and under these circumstances he asked that the case might be postponed.

Hargreaves, parliamentary agent (for petitioner), assented to the application.

The CHAIRMAN: The case is adjourned *sine die*.

Agents for Petitioner, *Hargreaves & Co*.

Agents for Bill, *W. & W. M. Bell*.

LOCAL GOVERNMENT PROVISIONAL ORDER (FOR THE FORMATION OF THE EDMONTON, ENFIELD, SOUTH HORNSEY AND TOTTENHAM JOINT HOSPITAL DISTRICT) CONFIRMATION BILL.

Petition of (1) THE SOUTHGATE LOCAL BOARD; AND (2) THOMAS JAMES MANN AND OTHERS.

2nd March, 1891.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Hospital for Infectious Diseases—Formation of United District—Sanitary Authority of Adjoining District Alleging Injurious Affecting—Owners and Occupiers of Adjacent Property—Objection to Proposed Site of Hospital—Absence from Order of Provisions relating to Site—Admission of Facts alleged by Petitioners—Application to Parliament Unnecessary—Public Health Act, 1875, sects. 131, 279, 308—S. O. 5 [Notices to specify limits of Burial Ground, Hospital, &c.]—S. O. 151, 208a [Proceedings on Bills for confirming Provisional Orders, &c.].

The bill confirmed a Provisional Order made by the Local Government Board under sect. 279 of the Public Health Act, 1875, for the formation of a united district for the purposes of the provision, maintenance, and management of a hospital for infectious diseases. The petitioners were the sanitary

authority of a district adjoining that of one of the constituent districts proposed to be united for the purposes of the Order, and they alleged in their petition that the local board of the constituent district adjacent to their own had entered into an agreement for the purchase of a site for the proposed hospital, which was actually on the border of their own district, and that this site had been approved of by the Local Government Board, who had sanctioned a loan to complete its purchase. These facts were admitted by counsel for the undertakers of the Order, who however pointed out that the Order contained no provision or reference to any site for the hospital; that it would have been competent for the constituent districts under sect. 131 of the Public Health Act, 1875, to have combined in providing a common hospital without any application to Parliament, the only object of the Order being to provide the machinery for the management of the hospital by a joint board, and that a hospital for infectious diseases could have been built on the proposed site by the local board of the district adjoining that of the petitioners, without the latter having any power to raise objections:

Held, however, that inasmuch as the undertakers of the Order had elected to apply to Parliament for the powers they desired, and having regard to the facts as to the site admitted by the undertakers, and the size of such a hospital as would be required to accommodate the population of the constituent districts, the petitioners were entitled to be heard before the Committee on the bill confirming the Order to claim protection for their district.

The *locus standi* of the petitioners (1) was objected to on the following grounds: (1) the petition does not allege or show, nor is it the fact that any land, house, property, right, or interest of the petitioners will be or can be taken or affected under the powers of the bill or of the said Provisional Order; (2) the fact that land, which may be used for an infectious hospital, adjoins the district of the petitioners does not according to the practice of Parliament entitle the petitioners to be heard against

the bill or the Provisional Order; (3) no powers are contained in the bill or the Provisional Order of purchasing or utilizing the land at World's End Farm referred to in the petition, or of using the petitioners' roads or sewers. The Enfield local board alone or in combination with the other local authorities named in the Provisional Order could under existing law utilize the said land for the purpose of a hospital, and the *status* and rights of the petitioners are not in any way altered by the bill or by the said Provisional Order; (4) the petitioners are not entitled to be heard against the formation of a joint board for the management of infectious hospitals in districts in which they have no jurisdiction; (5) neither the bill nor the said Provisional Order contains any provision affecting the petitioners; (6) the petition does not allege nor show that the petitioners have, nor have they in fact any such interests in the objects and provisions of the bill or of the said Provisional Order as entitles them to be heard against it.

The *locus standi* of the petitioners (2) was objected to on the following grounds: (1 and 2) on the same grounds as those contained in objections (1 and 2) to the *locus standi* of the petitioners (1) (*q.v. supra*); (3) because the formation of a joint board for the management of infectious hospitals within the districts of the various local authorities mentioned in the Provisional Order does not in any way affect the petitioners, and so far as regards any question as to the use of roads and sewers in the district of the Southgate local board, the petitioners are represented by that board who petition against the bill; (4) because neither the bill nor the Provisional Order contain any provision affecting the petitioners; (5) because the petition does not allege or show that the petitioners have, nor have they, in fact, any such interest in the objects and provisions of the bill, or of the said Provisional Order as entitles them to be heard against it.

Pembroke Stephens, Q.C. (for petitioners (1)): This is a bill for the confirmation of an order made by the Local Government Board by virtue of sect. 279 of the Public Health Act, 1875, for the formation of a united district to be called the Edmonton, Enfield, South Hornsey and Tottenham joint hospital district for, as is stated in the Order, "the purposes of the provision, maintenance and management for the use of the inhabitants of the constituent districts of a hospital or hospitals for the reception of cases of infectious diseases." The Provisional Order is one made under the provisions of the Public Health Act for the formation of a united hospital district consisting of these

four authorities. S. O. 5 has been enlarged to include district hospitals for infectious diseases, thereby showing that Parliament considered this to be one of a class of applications which required the clearest and fullest notice. If this were a bill, the limits of the land proposed to be used for an infectious disease hospital would have to be set out, and our right to be heard would be undoubted. We are by statute the guardians of the health of the people in our district, and this infectious diseases hospital is intended to be built on the boundary line of our district. The hospital in itself will be a source of danger to our district, and besides that patients suffering from infectious diseases will be brought to it along roads in our district, and the only way of draining this hospital is through the sewers of our district, as the natural slope and fall is in that direction. This is not an Enfield Order, but it is an Order for the establishment of a hospital on a huge scale for the accommodation of a population of about 130,000 entirely outside our district; and we are informed that it is intended to make arrangements for the reception of pauper patients from portions of the Edmonton union other than the four districts proposed to be created into this hospital district. We have been informed by the Enfield local board, as stated in paragraph 4 of our petition, that that board has agreed to purchase the land on which it is proposed to construct this infectious diseases hospital, which land is on the very border of our district, after obtaining the approval of the Local Government Board of the site, and has also applied for a loan to that Board, and the loan has been sanctioned. This state of facts is not denied by the undertakers of the Order, and to carry it out by article 14 of the Order, sects. 173 and 174, relating to contracts, and sects. 175, 176, 177, relating to the purchase of lands of the Public Health Act, are incorporated. When Enfield becomes part of this joint district, instead of retaining the lands for its own use, those lands will be made over to the joint district, and the united hospital district will provide its hospital, not on the scale required for Enfield, but on the joint scale, plus the scale involved by the Edmonton union hereafter coming in. We submit that it is unreasonable in the public interests, that such a hot-bed of disease should be established without the health authority of the adjoining district being before the Committee to see that proper protective provision are introduced, if it should be decided by the Committee that this is the proper place to establish such a hospital at all, which we submit it is not. In

the *Bolton Improvement Bill*, 1882 (3 Clifford and Rickards, 134), the corporation, who already had powers to establish a hospital asked for powers to compel people within their own district to go to that hospital, and the outside sanitary authority who petitioned alleged that this would affect them, and they were allowed to be heard for the purpose of securing proper provisions. Ours is a stronger case, for Bolton actually had authority to provide a hospital, whereas in this case no one has such authority, but a board is proposed to be created for exercising such authority. We are injuriously affected by this Provisional Order, and claim a *locus standi* under S. O. 134.

Ledgard, Q.C. (for promoters): The object of the Provisional Order is to provide for the constitution of a united hospital board, and for nothing else, and the object is merely to save expense and inconvenience, so that one hospital should be managed by a joint board, the machinery for which is provided by the Order. Sect. 131 of the Public Health Act says, "two or more local authorities may combine in promoting a common hospital," but there are not sufficient provisions in the Act for joint management, and instead of working under the Public Health Act, the undertakers wished to have the machinery which they would get under this Provisional Order.

MR. SHIRESS WILL: You cannot call article 14, which enables the united board to exercise some most important powers of the Public Health Act, mere machinery.

Ledgard: Certain Acts are incorporated with the Provisional Order for the sake of convenience, but all that it does is to constitute a united board, and the petitioners ask as to a Provisional Order, which does not refer to any site at all, to be heard against a particular site. Although I admit the facts stated in paragraph 4 of the petition as to the site objected to by the petitioners, I say that the Enfield board could erect an infectious diseases hospital on this site, and the petitioners would have no right to object. Their legal status is not altered by this Provisional Order; moreover S. O. 134 only refers to a private bill.

MR. SHIRESS WILL: Standing Orders 151 and 208a make Standing Orders applicable to a private bill also applicable to a Provisional Order.

MR. CHANDOS-LEIGH: Though this could have been done without coming to Parliament at all, as you have come to Parliament are not the petitioners entitled to be heard?

Ledgard: Not under the circumstances. The whole of the petition comes to this, that they do not object generally to the power to

erect a hospital, and there is no objection to the formation of the board, so that the whole objection is to the particular site. If this order were dropped and the agreement for purchasing the site is carried out, the Enfield board could build a hospital on this site at once. In the case of the *Local Government Board Provisional Order (Dawlish) Confirmation Bill*, 1878 (2 Clifford and Rickards, 114), it was held that a hospital authority may erect an infectious diseases hospital, but if it is so conducted as to be a nuisance, the proper remedy is by action against the authority. There is nothing in the Provisional Order to override the remedy for damage given by sect. 308 of the Public Health Act.

The CHAIRMAN: The petitioners do not want damages; they want to prevent the risk. The question that arises is this. When the aid of Parliament is invoked to create a powerful body of this kind, ought not the same body who create that joint body to see that they are put under limitations to safeguard their neighbours.

Ledgard: We do not want this Provisional Order except for the convenience of the machinery it provides. Under the existing law, we have an existing right to do what is proposed to be done so far as the matter affects the petitioners.

Stephens: Not upon the scale proposed by the bill.

Cripps, Q.C., appeared for petitioners (2), but the promoters agreed to concede their *locus standi* if that of petitioners (1) was allowed.

The CHAIRMAN: The *Locus Standi* is Allowed. *Locus Standi* of Petitioners (2) also Allowed.

Agents for Petitioners (1) and (2), *Dyson and Co.*

Agents for Bill, *Rees & Frere*.

LONDON COUNTY COUNCIL GENERAL POWERS BILL.

Petition of THE BRUSH ELECTRICAL ENGINEERING COMPANY AND SIX OTHER ELECTRICAL LIGHTING COMPANIES.

6th March, 1891.—(Before Mr. PARKER, M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. COMPTON, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Wallace (for petitioners): We have agreed with the promoters that the following companies should be struck out of the petition, viz., the Brush Electrical Engineering company;

the Chelsea Electricity Supply company; the Kensington and Knightsbridge Electric Lighting company; the Metropolitan Electric Supply company, and the Notting Hill Electric Lighting company.

Cripps, Q.C. (for promoters): We admit the *locus standi* of the London Electric Supply corporation against clauses 18 and 22 of the bill in so far as they relate to the widening of St. George's-place, Knightsbridge, and in so far as they relate to the new street from Evelyn-street to Creek-road, Deptford; and we also admit the *locus standi* of the Westminster Electric Supply corporation against clauses 18 and 22 in so far as they relate to the widening of St. George's-place, Knightsbridge.

Locus Standi Allowed accordingly.

Agent for Petitioners (1-7), *A. C. Curtis-Hayward*.

Agents for Bill, *Dyson & Co.*

MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (EXTENSION TO LONDON, &c.) BILL.

Petition of (1) VISCOUNT PORTMAN.

9th April, 1891.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Running Powers over Railway Intersecting Property of Petitioner—Prohibition of Heavy Goods Traffic by Existing Act—Practical Repeal of Protective Clause—Injurious Affecting—Claim of Petitioner to be heard generally as Landowner.

The bill empowered the promoters to construct railways between Nottingham and London commencing by a junction with their own railway system near the former place, and thus giving them a through route between Manchester and other places in the north of England and the metropolis. One of the railways authorised by the bill formed a junction with the Metropolitan railway on the north-west side of London, and clause 47 of the bill gave the promoters running powers, for the purposes of traffic of all kinds, over the Metropolitan railway between this junction and the Baker-street station of that company

The petitioner was the owner of a large estate consisting of house property, which was intersected by this portion of the Metropolitan railway, as well as of property in the neighbourhood of Baker-street and the site of the London terminus of the proposed railway. By a provision (sect. 27) of the Metropolitan and St. John's Wood Railway Act, 1873, the Metropolitan company was prohibited from carrying heavy goods on this portion of their railway between the hours of eleven at night and six in the morning, and the petitioner contended that the effect of clause 47 of the bill was to allow the promoters to carry heavy goods traffic coming from all parts of the north of England over this portion of the Metropolitan railway which that company were themselves prohibited from doing, and thus to deprive him of the benefit of sect. 27 of the Act of 1873, which had been inserted at the instance of himself and other parties, and for the protection of their property. He claimed to be heard generally as a landowner against the repeal by the bill of the protective provisions in the Act of 1873, and also on account of the injury to his property that would result from the admission of the promoters to running powers over this portion of the Metropolitan railway, which running powers he contended were an essential part of the promoters' scheme. The promoters denied that the petitioner had any special or personal rights in respect of the existing prohibition upon heavy goods traffic, and urged that, even if such were the case, he was only entitled to be heard against clause 47 of the bill:

Held, however, that the repeal effected by clause 47 of the bill of the protective provision of the Metropolitan and St. John's Wood Railway Act, 1873, so affected the rights of the petitioner as a landowner that he was entitled to be heard generally against the bill.

The *locus standi* of the petitioner was objected to on the following grounds: (1) the petition does not allege nor is it the fact that

the bill contains any provisions giving power to take any lands or other property of which the petitioner is owner, lessee or occupier; (3) the paragraphs of the petition numbered 3 to 6 both inclusive, the accuracy of which the promoters do not admit, are not such as to entitle the petitioner to be heard against the bill; (3) the petitioner is not entitled to be heard in respect of any apprehended injury arising from the powers referred to in paragraphs 7 to 14 both inclusive of the petition; (4) the petition does not disclose any facts or circumstances which, according to the practice of Parliament, entitle the petitioner to be heard either against the preamble or the clauses of the bill.

Cripps, Q.C. (for petitioner): The bill authorises the construction of a new through railway or railways, there being nominally 14 new railways included in clause 5 of the bill, commencing near Nottingham by a junction with a railway of the promoters authorised by the Manchester, Sheffield and Lincolnshire Railway Act, 1889, and terminating in London. The petitioner is the owner of a large estate comprising house property in the neighbourhood of Baker-street and St. John's Wood, and he claims a general *locus standi* as a landowner on two grounds: (1) because the bill indirectly removes certain restrictions upon the carriage of heavy goods traffic over a portion of the Metropolitan railway which passes through his property and (2) because his property, although it is not sought to be taken compulsorily under the powers of the bill, will be injuriously affected to a serious extent, while he will have no remedy at law, the injury being done not by the construction of works but by running powers over an existing railway. With regard to ground (1) clause 47 of the bill provides that, "The company," *i.e.*, the Sheffield company, "and all companies lawfully working or using the railways of the company or any part thereof, may run over and use with their engines and carriages of every description * * * for the purposes of traffic of all kinds * * * the portion of the undertaking of that company," *i.e.*, the Metropolitan railway company, "situate between the commencement of the said Railway, No. 9, and the station of that company at Baker-street, in the county of London, or some part thereof, together with that station and all other stations, works and conveniences of every description pertaining to or connected with that portion of railway." The effect of that clause will be to introduce over this portion of the Metropolitan railway the goods traffic of a through railway from the north to London, and indirectly to repeal sections 26 and 27 of the

Metropolitan and St. John's Wood Railway Act, 1873, which were inserted at the instance and for the protection of the petitioner and others. Those sections are as follows: sect. 26: "Subject to the provisions of this Act, sect. 88 of the Metropolitan and St. John's Wood Railway Act, 1864" (which prohibited heavy goods traffic altogether) "is hereby repealed, provided always that it shall not be lawful for the company to carry heavy goods until the present line is double throughout"; sect. 27: "It shall not be lawful for the company to carry heavy goods on the railway of the company between the Swiss Cottage and Baker-street stations between the hours of eleven at night and six in the morning." The Metropolitan railway company has repeatedly attempted to obtain the repeal of those sections, and did so again last year by the *Metropolitan Railway Bill*, 1890, which was opposed by the petitioner (*supra*, p. 43), and the repeal of these clauses has always, as then, been successfully resisted. I say that these running powers over this portion of the Metropolitan railway for goods and other traffic is an essential part of their scheme for a new route to London, and that the petitioner ought to have a general *locus standi* to argue that there is no such public necessity for the railways proposed by the bill as would justify the removal of the statutory protection given to him and his tenants by sections 26 and 27 of the Act of 1873. As regards ground (2), namely, the petitioner's claim to be heard as a landowner whose property, although not taken, will be injuriously affected by the bill, a special instruction has been given to the Committee on the bill which is as follows: "That it be an instruction to the Committee that they have power to take evidence, and to report to the House whether the site of the terminus proposed in the bill is the best which can be devised in the interests of the people of London."

The CHAIRMAN: That instruction does not say that parties alleging the contrary should be heard.

Cripps: I will first deal with the right of the petitioner to be heard, quite apart from that instruction, and then see how far that right is strengthened by the fact of such an instruction having been given to the Committee on the bill. The principle at first adopted by the Court that a landowner, whose property was injuriously affected, was not entitled to be heard because he could get compensation under sect. 68 of the Lands Clauses Consolidation Act, 1845, has been departed from in several instances in which there was a probability of serious injury to property without

adequate compensation being obtainable. The use of Baker-street station for the purposes of a through railway will render the neighbourhood, the houses in which belong very largely to Lord Portman, unfit for residential purposes, and even if the Committee on the bill should decide that the proposed site for the London terminus of the railway, namely, Boscobel-gardens, is not the best possible, they would very likely recommend another site in the centre of Lord Portman's property, and it would then be useless for him to oppose a bill introduced next Session for the acquisition of that site after Parliament had sanctioned the construction of the railway up to London. There have been several cases, in which the owners of property injuriously affected by the provisions of a bill have been granted a *locus standi*, the first to which I will refer being that of the *South-Eastern Railway Bill*, 1876 (1 Clifford & Rickards, 258).

Mr. SHIRESS WILL: What was about to be done in that case was to damage the light and air of certain business premises. Light and air are incidents of the property in a man's premises, therefore what was being damaged, or taken away, was really an appurtenant of the premises.

Cripps: The petitioners there could have got compensation, which we could not. Then there is the case of the *Hoylake and Birkenhead Rail and Tramway Bill*, 1881 (3 Clifford and Rickards, 65).

The CHAIRMAN: In that case the argument was not depreciation of value for residential so much as for prospective commercial purposes.

Cripps: It does not matter whether rent is received from business premises or residential property. If it has to be reduced in amount the loss to the owner of the property is the same. Since the decision in the cases of *Brand v. Hammersmith and City Railway Company* (4 H. L. 171), and *Ricket v. Metropolitan Railway Company* (2 H. L. 175), a *locus standi* has been frequently given to a man who could not get adequate, if any, compensation at law. In this case the depreciation of the value of Lord Portman's property owing to the carriage of heavy goods coming from the north, and the construction of a large terminal station in the vicinity, will be enormous. Then I call the attention of the Court to the cases of the *Birkenhead, Chester and North Wales Railway Bill*, 1873 (1 Clifford & Rickards, 3), and the *Metropolitan and St. John's Wood Railway Bills*, 1871 and 1873 (2 Clifford & Stephens, 189, and 1 Clifford & Rickards, 46). I pray in aid the instruction to the Committee as to the proposed site of the terminus in London, and I say that

if they recommend another site, Lord Portman should, as the owner of land upon which such site would probably be recommended, be present to discuss the question of the site with the Committee.

Mr. CHANDOS-LEIGH: I do not think that instruction was intended to be a direction to this Court to let in anybody who would not otherwise have had a *locus standi*.

Mr. SHIRESS WILL: Are not the protective clauses in the Act of 1873 in a sense attached to the land which they protect, and will not the bill therefore take away something belonging to the owner?

Cripps: Yes; and no doubt the tenants have relied on those provisions when taking leases of houses. If this were a covenant running with the land, and a bill were introduced interfering with that covenant, there would be a landowner's general *locus standi* given against the bill.

Pember, Q.C. (for promoters): The petitioner is only entitled, if at all, to a limited *locus standi*. This is removing a special statutory protection, which is not a proprietary right peculiar to the petitioner, but is for the benefit of all persons owning property or residing in the vicinity of this portion of the Metropolitan railway, and moreover the running powers over it given to the promoters by clause 47 are not essential to the scheme of the bill. The petition is throughout directed against the repeal of sections 26 and 27 of the Metropolitan and St. John's Wood Railway Act, 1873 (which do not mention Lord Portman or his estate), until you come to the last formal paragraphs which contain the usual statements that the preamble of the bill is incapable of proof, the engineering bad, and the estimates insufficient. The repeal of those sections is a collateral matter, which can and would be argued quite independently of the question involved in the preamble, namely, the construction of a great new through railway from the north to London.

The CHAIRMAN: The petitioner argues that unless he is before the Committee to show that there is no public necessity for the line it is useless for him to oppose.

Pember: He is not the right party to discuss the great public case. The case of *Mdlle. Tietjens* against the *Metropolitan and St. John's Wood Railway Bill*, 1871, was stronger than the petitioner's case, because she was a purchaser of a house from the railway company, and in the printed conditions of sale it was stated that a copy of the Metropolitan and St. John's Wood Railway Act, 1864, which by sect. 88 prohibited the carriage of heavy goods over this section of railway altogether, would be produced at the

time of sale. *Mdlle. Tietjens*, however, was only allowed a limited *locus standi* against the repealing clause in that bill, and also in the bill of 1873.

Mr. SHIRESS WILL: This is a proposal for an entirely new railway, and the stream of traffic would be much larger.

The CHAIRMAN: It might also be said that the owner of a large estate would be a more suitable person to argue the whole case than an individual householder. Lord Portman represents a number of tenants.

Mr. HEALY: You must consider the nature of the bill. This is a bill to make a through route to London, and the argument for the petitioner is that a through route which does not involve in it the taking of heavy goods traffic to Baker-street would be an absurdity. There is no mineral traffic at present.

Pember: The cases cited for the petitioner are not in point. The *South-Eastern Railway* case was one of special injury to commercial interests, and the *Hoylake and Birkenhead* case was one of injury to access to a navigable river, and in cases of injury to access the Court is indulgent to petitioners. Surely because the petitioner is a large landowner the Court will not depart from its usual practice and give a *locus standi* on the ground of mere injurious affecting. The other cases cited are all cases of special damage, and not those of an ordinary landowner injuriously affected by a bill.

Mr. SHIRESS WILL: Speaking for myself, I should not be disposed to alter what has generally been the practice here on account of the cases cited on behalf of the petitioners which are capable of being explained by their special circumstances. The real point to my mind is whether the repeal of the protective clauses in the Act of 1873 in the case of a bill involving the bringing of this new stream of traffic into London is sufficient to give the petitioner a general *locus standi*.

Mr. HEALY: The removal of this restriction appears to be vital to the whole scheme.

The CHAIRMAN: We think the Petitioner is entitled to a general *Locus Standi*.

Agents for Petitioner, *Dyson & Co.*

Petition of (2) OWNERS, LESSEES, AND OCCUPIERS OF LANDS, HOUSES, AND PROPERTY IN THE PARISHES OF SAINT MARYLEBONE, AND ST. JOHN, HAMPSTEAD; (3) JOHN WOOLLEY PITT AND THOMAS JOHN PITFIELD AND OTHERS.

Running Powers over Railway—Prohibition of Heavy Goods Traffic by Existing Act—Repeal of, by Bill—Construction of Terminal Station—Injurious Affecting—Loss of Amenity—Owners, Lessees and Occupiers—Inhabitants—S. O. 134 (Municipal Authorities and Inhabitants of Towns)—Meaning of "District" in S. O.

A general *locus standi* was also claimed against the bill by (1) 1,460 owners, &c., of property (of whom 150 were conceded a *locus standi*, their property being included within the limits of deviation) and (2) by a comparatively small number of owners, &c., of property in the neighbourhood of the portion of the Metropolitan railway proposed to be used by the promoters for traffic of all descriptions, and in the neighbourhood of the London terminus of the proposed railway. Both sets of petitioners claimed to be heard on account of the repeal by the bill of sect. 27 of the Metropolitan, &c., Railway Act, 1873, on the same grounds as those taken by (1) Viscount Portman (*q.v. supra*); and also on account of the proposed erection of a terminal station near their property, which they alleged would have the effect of destroying the residential character of their neighbourhood, and so affecting the amenity and value of their property. The petitioners (3) claimed to be heard as individual owners, &c., of property, who would be similarly affected as (1) Viscount Portman, and the petitioners (2) claimed to be heard both as owners, &c., and as inhabitants of a district injuriously affected by the bill under S. O. 134. Counsel for the promoters conceded the petitioners a limited *locus standi* as to the repeal of sect. 10 of the Metropolitan, &c., Railway Act, 1873, but denied their right to be heard generally as landowners on account of loss of amenity, their property not being sought to be compulsorily acquired under the bill, or as inhabitants of a district injuriously affected by the bill, within the meaning of S. O. 134: *Held*, however, that both petitioners (2) and (3) were entitled to be heard generally against the bill, the former, it appeared, being admitted as inhabitants under S. O. 134.

The *locus standi* of the petitioners (2) was objected to on the following grounds (1) the petition does not allege nor is it the fact that the bill contains any provisions giving power to take any lands or other property of which the petitioners are owners, lessees, or occupiers; (2) the paragraphs of the petition numbered 4 to 8, both inclusive, the accuracy of which the promoters do not admit, are not such as to entitle the petitioners to be heard against the bill; (3) the petitioners are not entitled to be heard in respect of any apprehended injury arising from the construction of the railway; (4) the petition does not disclose any facts or circumstances which, according to the practice of Parliament, entitle the petitioners to be heard either against the preamble or the clauses of the bill.

The *locus standi* of the petitioners (3) was objected to on the following grounds: (1) the petition does not allege nor is it the fact that the bill contains any provisions giving power to take any lands or other property of which the petitioners are owners, lessees, or occupiers. Indeed the petitioners only allege that they are owners, lessees, and occupiers of property in the immediate neighbourhood of the termination of the proposed Railway No. 9 and this does not entitle them to be heard against the bill; (2) the paragraph of the petition numbered 5, the accuracy of which the promoters do not admit, is not such as to entitle the petitioners to be heard against the bill; (3 and 4) on similar grounds to those contained in objections (3 and 4) to the *locus standi* of petitioners (2), *supra*.

Saunders, Q.C. (for petitioners): The petition is signed by 1,460 people, of whom 150 are within the limits of deviation, and their *locus standi* is not objected to, but the remainder are not actually within the limits of deviation, and they seek to appear upon one petition. The piece of land between the St. John's Wood railway and Regent's-park is entirely represented by us, and besides those residing in that particular district there are others residing in the neighbourhood. The petition alleges that this district will be injuriously affected by the construction of the railway, turning what is now a residential neighbourhood into a commercial one, and turning quiet roads into streets which would be used by heavy traffic to and from the new railway station, and we contend upon these grounds quite apart from and in addition to, the repeal of clause 27 in the Metropolitan and St. John's Wood Railway Act, 1873, that we are entitled to appear as representing a class, though our land is not taken. The petition is thoroughly representative, and is signed by con-

siderably more than half of the residents in this district, some of them being also freeholders. In the case of the *Metropolitan and St. John's Wood Railway Bill*, 1871 (2 Clifford & Stephens, 189), which sought to repeal a protective provision, 250 owners, lessees, and occupiers petitioned against the repeal of the provision, and their *locus standi* was allowed, although they were not within the limits of deviation. Another case was that of the *Metropolitan, &c., Railway Bill*, 1873 (1 Clifford & Rickards, 46), when the same company renewed the attempt to repeal that clause, having failed in 1871. In that case a general *locus standi* was asked for, and the petitioners were given a *locus standi* to be heard against the repeal of the clause. Therefore those cases are a distinct authority in favour of all these people whose land is not taken being heard as regards the repeal of a clause of that trial, and I need not argue that giving powers to a third company to run over this railway is a practical repeal of the clause in the Act of 1873.

Pember, Q.C. (for promoters): I admit your right to a *locus standi* to be heard against the repeal of the clause.

Saunders: The question then arises whether or not we are not entitled to a general *locus standi* upon the authority of Lord Portman's case decided yesterday, or as inhabitant under S. O. 134.

Mr. SHIRESS WILL: We decided in Lord Portman's case that if the opposition is to be of any use in a case of this kind the *locus standi* ought to be against the whole scheme.

Saunders: If we got a limited *locus standi* from a certain number of the petitioners and a general *locus standi* for 150, it would be most difficult to distinguish between one set and the other in the conduct of the case. Moreover our interest cannot be said to be unimportant, and if we are to be affected first by the practical repeal of the clause by giving running powers, and secondly in the alternative by the construction of a new line of railway close by in a tunnel to do exactly the same thing, I submit we ought to have a general *locus standi*. If it was a reasonable thing that there should have been a restriction placed upon the old line, it must be also reasonable that those who now have the benefit of that should be heard to ask that a restriction of the same kind be put upon the new railway.

The CHAIRMAN: Parliament might say to the promoters, you may have it as a passenger line but not for heavy traffic.

Saunders: This is an entirely new case. The effect of this bill will be to destroy and entirely alter the character of this residential neighbourhood, and the bill not only proposes

to run a line through a residential neighbourhood, but it also proposes to erect a large station, for the first time, in the middle of what is entirely a residential neighbourhood. The case of the petitioners cannot properly be represented by those who are included within the limits of deviation, for they will leave the neighbourhood after their property is taken. Parliament would never prevent the enlargement of a station after it was built, merely because it was in a residential neighbourhood, and this makes it therefore most essential that the petitioners should be heard whether there should be a station here or not, more particularly when there is an instruction to the Committee that they shall take into consideration whether this is the best site for a station.

The CHAIRMAN: If these petitions were taken separately according to the practice of the Court, there might be a difficulty in giving a *locus standi*, but it presents rather a new feature when the whole thing is on a vast scale, and when the Committee will certainly have to consider the conflicting interests of the district and the railway company.

Saunders: The case of the *Southport and Cheshire Lines Extension Railway Bill*, 1882 (3 Clifford & Rickards, 227), is not quite the same as this, but the principle adopted there may well be adopted here; taking the particular circumstances of that case it was held that within a certain district people had such an interest that the Court gave them a *locus standi* for loss of amenity, though they were not owners, lessees, or occupiers of property compulsorily taken. This is a much greater grievance to a large neighbourhood, and in a case like this you cannot limit the *locus standi* to those people who are actually fronting upon the railway. I submit that we are a class entitled to be heard under S. O. 134, and that the question of what is a district within the meaning of the Standing Order turns very much on the particular circumstances of each particular case.

The CHAIRMAN: I should construe "district" to mean a district *ad hoc*. Suppose a line running through two or three miles of the metropolis, a district would be a reasonable district on either side of it, as against any parochial district.

Saunders: There is this further point, that our access will be indirectly affected by this bill, as certain roads will be stopped up, and the traffic now going through those roads will be driven out of those roads into the neighbourhood in which our houses are situated.

Mr. SHIRESS WILL: You claim a *locus standi*

under S. O. 134. You say the 1,300 petitioners petition as the inhabitants of a district?

Saunders: Yes.

Mr. BONHAM-CARTER: You would say that the superior interests of the 150 petitioners would not entirely cover the lesser interests of the 1,300 petitioners.

Saunders: No; it might be that the people within the limits of deviation might get an agreement from the promoters that their property should be taken, and therefore the whole question of the amenity of the neighbourhood, which they might have raised, would be dropped.

Cripps, Q.C. (for petitioners (3)): We are owners and lessees of property in the immediate neighbourhood of the proposed station at the junction of Boscobel-gardens with Boscobel-place. I do not put our case on S. O. 134, but we object to the bill on the same grounds as the former petitioners. The real question is whether our *locus standi* is to be limited to the running powers into Baker-street, or whether we are to have a general *locus standi*. I submit we are entitled to a general *locus standi*, really being in the same position as Lord Portman, though having a separate and distinct interest.

Pember (in reply): What the Court are asked to do in this case is a serious departure from the old rule, that unless a landowner's land is taken he has no right to be heard. Suppose the Court gave all these petitioners a general *locus standi*, and suppose clause 47 is withdrawn, then these landowners would have got a general *locus standi* against a bill for making a railway when not a yard of any of their land was taken.

Mr. SHIRESS WILL: We must decide the case as if the clause was in the bill.

Pember: If the alternative line alone had been in the bill the petitioners would not have been entitled according to practice to be heard. The petitioners do not come within S. O. 134.

The CHAIRMAN: One question is whether "district" in the Standing Order is not to be interpreted as something different to "parish."

Pember: Though you must not interpret the word district too technically, I do not believe the word "district," coming as it does in contiguity to the word "town," means a mere haphazard neighbourhood along the line of railway.

The CHAIRMAN: Would you say that the parish of St. Marylebone would be a district in this case?

Pember: That is one of the difficulties.

Mr. SHIRESS WILL: Is there a district of St. John's Wood?

Pember: Technically I deny that there is any such thing. You are here asked for the first

time to allow petitioners whose land is not taken a general *locus standi* on the ground of amenity alone. With regard to roads the Court has never allowed a *locus standi* to a petitioner on the question of the mere stopping up of a road, unless the access has been private and special to the petitioner, and still less would it give a *locus standi* where it does not destroy any convenience of his own, but simply makes the use of the roads a little more than hitherto and so inflicts indirect damage on him.

The CHAIRMAN: Where you have a large representative body as in this case alleging that the effect of this would be to send a lot of traffic through their streets it is a different matter.

Pember: That merely shows that this is not a special and private matter, and that the proper persons to deal with it are the road authority. In this case the London County Council, the Vestry of Marylebone, and the Vestry of St. John, Hampstead, all petition, and allege injury by sending traffic through these roads, and it is obvious that the petitioners are represented by these public authorities.

The CHAIRMAN: The petitioners say that there may be cases in which the general authority does not represent special interests.

Pember: I submit there is no special interest here. The case of the *Midland Railway Bill*, 1871, on the petition of *George Lane Fox* (2 Clifford & Stephens, 108), is very similar to the present. There the petitioner's *locus standi* was refused on the ground that the road trustees were the proper people to appear.

Saunders: In the case which has been cited of the *Midland Railway Bill*, though it is true that Mr. George Lane Fox was not given a *locus standi*, yet, on the petition of 334 inhabitants of Carlton representing the district, a *locus standi* was allowed. The road authority represent the parish generally, and not only this particular part of it, and as they might be settled with we submit that we are entitled to be heard.

The CHAIRMAN: The *Locus Standi* of the Petitioners (2) and (3) is *Allowed*.

Agent for Petitioners (2), *Dyson & Co.*

Agent for Petitioners (3), *Grahames, Currey, and Spens.*

Petition of (4) OWNERS, LESSEES, AND OCCUPIERS IN BROADHURST GARDENS, IN THE PARISH OF ST. JOHN, HAMPSTEAD.

Construction of Railway in front of Petitioners' Property—Power of Promoters to Stop up or

Divert Road Included within Limits of Deviation—Absence of Express Power in Bill—Practice—Interference with Access to Residential Property—Temporary Injury during Construction of Works—Permanent Loss of Amenity—Railways Clauses Consolidation Act, 1845, ss. 16 and 46—S. O. 43 (Diversion of Roads, &c.)

The petitioners, 23 in number, were owners and occupiers of houses on the south side of certain gardens, and the promoters took power under the bill, for the purpose of constructing Railway No. 9 of the bill, to take and pull down the houses on the north side of the gardens, and included a road running immediately in front of the petitioners' houses within the limits of deviation, but no express power was contained in the bill to stop up or divert this road. Counsel for the petitioners, however, argued that the road being within the limits of deviation the promoters could appropriate and deal with it as they chose for the purposes of their railway, and referred to sections 16 and 46 of the Railways Clauses Consolidation Act, 1845, which Act was incorporated in the bill, as conferring general powers upon the promoters to alter the levels of and deal with roads. The petitioners also complained of the loss of access to other parts of the town by the proposed construction of the railway in front of their houses, of the inconvenience and annoyance they would suffer during the construction, and the injury to and depreciation in the residential value of their property by the construction of the railway and a terminal station in their neighbourhood. Counsel for the promoters contended that the promoters could not stop up or divert the road in question without express powers being given to them by the bill to do so; and that temporary inconvenience during the construction of works and loss of amenity were not grounds for a *locus standi* according to the practice of the Court:

Held, that, although the Court was inclined to agree with the contention of the promoters that the road in question could not be stopped up without an express power being given for that purpose by the bill, the petitioners were on the grounds above-

named entitled to be heard against the construction of the railway which passed in front of their property.

The *locus standi* of the petitioners (4) was objected to on the following grounds: (1) the petition does not allege nor is it the fact that the bill contains any provisions giving power to take any lands or other property of which the petitioners are owners, lessees or occupiers; (2) the paragraphs of the petition numbered 3 to 7, both inclusive, the accuracy of which the promoters do not admit, are not such as to entitle the petitioners to be heard against the bill; neither are the petitioners entitled to be heard in respect of any apprehended injury arising from the powers referred to in the said paragraphs or in paragraphs 8 and 4 of the petition; (3) the petition does not disclose any facts or circumstances which, according to the practice of Parliament, entitle the petitioners to be heard either against the preamble or the clauses of the bill.

Pembroke Stephens, Q.C. (for petitioners): There are about 42 signatures to this petition, two of whom represent the part of Broadhurst-gardens actually taken. These are on the north side, and their *locus standi* cannot be disputed. The others represent the part of Broadhurst-gardens on the south side, and their property is not actually taken, but the road in front of their houses is within the limits of deviation, and therefore can be stopped partially or wholly.

The CHAIRMAN: Do the promoters take power to stop up the road?

Pembroke Stephens: They put the railway on it, and they cannot avoid obliterating the greater part if not the whole of it, the effect of which will be that as regards any access on the townside of Broadhurst-gardens, which is the only access to these houses, we shall lose it.

Pember, Q.C. (for promoters): Unless we take absolute power to stop up a road, we cannot do it, nor can we diminish the width of it, unless we give notice, and this we have not done.

Pembroke Stephens: This is the power in clause 5 of the bill: "The company may make and maintain in the lines and according to the levels shown on the deposited plans and sections the railways hereinafter described with all proper stations, &c., and may enter upon, take and use such of the lands delineated on the said plans and described in the deposited books of reference as may be required for that purpose." This road forms part of the lands shown on the deposited plans, and I submit that the decided cases show that where an access is taken away

or seriously interfered with, a *locus standi* is granted.

The CHAIRMAN: I understand the promoters to say that by practice the road cannot be stopped up or altered unless power is taken in the bill to do so, and that power could not be taken during the progress of the bill, and that it must also be in the notice.

Pembroke Stephens: The promoters can do this by the bill unless there is something to qualify it in the bill.

Mr. SHIRESS WILL: If there is no power in the bill to stop up the road, the promoters, I take it, cannot do so. The clause relating to plans says they shall make the railway within the limits of deviation, but the practice is, I believe, that you cannot stop up or alter a road unless you take special power to interfere with the road, a power over and above its being within the limits of deviation.

Pembroke Stephens: As regards the two houses on the north of Broadhurst-gardens, I have an absolute *locus standi*; as to those houses on the south side, what I am submitting is that their access will or may be interfered with, short of stopping up the road, in such a serious manner as to bring me within the cases where loss, diminution, or inconvenience of access has been held by the Court to give a *locus standi*. I agree if you stop up a road altogether you want express powers to do so, but you may interfere with a road in such a way as to do a great deal of mischief, short of stopping it. There are very wide powers in the Railways Clauses Act, 1845, such as those given by sections 16 and 46 of that Act, to divert and alter the levels of roads, to carry them under or over the railway by means of bridges, and deal with them in various ways, and these powers must be read in connection with the specific power given in clause 5 of the bill.

Mr. SHIRESS WILL: It seems to me it is a question of law as to what the power is, and a question of the construction of Acts of Parliament. I am disposed to look at S. O. 43 as directory. It states what you are to put in your plan in connection with these matters. Non-compliance with Standing Orders would be a ground for complaint before the Examiner, but after the bill becomes law you have nothing more to do with the Standing Orders; you have only the bill to deal with and the deposited plans, which are part of the bill, for the purpose of construction. Then comes clause 5 of the bill, which says, "The company may make and maintain the railways in the lines and according to the levels shown on the deposited plans. Therefore if the deposited plan shows a certain amount of limits of deviation within which the centre line may be deviated the promoters may

deviate that to the full extent. That seems to me a matter of construction, but *non constat* that that carries with it a power to stop up a road not specially named in the bill.

Pembroke Stephens: Let me cite the case of the *Metropolitan, &c., Railway Companies Bill*, 1879, on the petition of Messrs. Kershaw & Haines (2 Clifford & Rickards, 197), in which this very point arose.

The CHAIRMAN: We need not go much into cases; if there is interference with access no doubt it is very much the practice to give a *locus standi*, always supposing there is a serious interference. Of course if there is an alternative and equally convenient access a *locus standi* is not given.

Mr. HEALY: How many feet are there between the limits of deviation and the front of your houses?

Pembroke Stephens: About six feet. We ask for a *locus standi* against this part of the line.

The CHAIRMAN: If you are correct in saying that they can come within six feet of the front of your houses it must be a substantial interference.

Pembroke Stephens: Then there is also the question of the character of the future traffic along this road, which will be large in amount and heavy in character, and which will pass in front and along this street. This point has been referred to in the previous petitions against the bill.

Pember (in reply): Under the common law you cannot stop up a road, and if you want to stop it up you must take express power to do it. That is why you find clauses similar to clause 15 in all Acts of Parliament. The mere inclusion of a road within the limits of deviation does not give you the power to take it. Clause 11 of the bill gives the company power to divert the roads in the schedule to that clause, and clause 15 gives them power to stop up the roads named in the schedule to it, and the whole of those roads are marked on the deposited plans "to be diverted," or "to be stopped up." This road is mentioned in neither of those clauses, nor so marked on the deposited plans, and the principle *expressio unius exclusio alterius* applies.

SHIRESS WILL: It comes to the question whether narrowing a road is the same as stopping up.

Pember: Unless the right to narrow is given by statutory power it is a trespass. It is not given by this bill, and must be given by direct legislative authority, and cannot be done by a side wind.

The CHAIRMAN: Suppose you had not the power to stop up the road the petitioners would

still ask for a *locus standi* on the ground of temporary stopping up of the road during the construction of the works.

Pember : Temporary interference with streets and roads is not their business.

The CHAIRMAN: It would interfere with access to private houses. Suppose we assumed that you are right, and that you cannot interfere permanently with a road, there are still portions of the petition that might entitle the petitioners to a *locus standi*; such as the pulling down of houses on the north side of the Broadhurst-gardens, and the interference with the road during the construction of works.

Pember : Here there is no question of these people being inhabitants of a district. The allegation that some of the houses are going to be pulled down, which will leave houses on the south side entirely open to the existing railways, is merely a question of loss of amenity, and to give petitioners a *locus standi* on this ground would be entirely contrary to practice.

The CHAIRMAN: Then as regards inconvenience and annoyance during construction of the line?

Pember : That does not entitle them to a *locus standi*.

Mr. SHIRESS WILL: The principle I think is clear. If the grievance of petitioners is only that of the public they would have no right to be heard, but if they have any special grievance with regard to their special street it is possible that they might have a case for a *locus standi* against the construction of this particular railway.

Pember : All these petitioners really say is that the proposed railway is in their immediate neighbourhood, and that it is an annoyance to them, and therefore they wish to be heard, but that is not enough to give them a *locus standi* according to practice.

The CHAIRMAN: The Court are very much disposed to agree with the promoters as to the legal aspect of the case, but they will not undertake to decide the point of law, and therefore they give a *locus standi* to the petitioners against this particular line.

Locus Standi Disallowed except as regards Railway No. 9.

Agents for Petitioners (4), *Durnford & Co.*

Petition of (5) GEORGE BOULTBY AND OTHERS, OWNERS, &C., OF PROPERTY IN NOTTINGHAM.

In this case it was stated by Counsel that the property of over 100 out of 112 petitioners, who signed the petition, was included within the

limits of deviation, and evidence in proof of this statement having been given, the Court *Allowed* the *Locus Standi* of the Petitioners.

Pembroke Stephens, Q.C., appeared for the petitioners.

Agents for Petitioners, *Durnford & Co.*

Petition of (6) THE VICAR AND CHURCHWARDENS OF THE PARISH CHURCH OF ST. MARY, LEICESTER.

Injury to Church by propinquity of Railway—Disturbances of Services—Structural Injury from Vibration—Obstruction for Access—Limited Locus Standi by Agreement.

The Vicar and Churchwardens of a parish church at Leicester claimed to be heard on the ground that the limits of deviation for the construction of Railway No. 3 of the bill shown in the deposited plans would allow the construction of the railway close to the church, and cause injury to the structure, and obstruct the entrances to the church, while the passage of trains so near it would interfere with the services. Counsel for the promoters agreed to allow the petitioners to raise these points for their protection before the Committee on the bill, but not to discuss the policy of constructing Railway No. 3 as part of the railways authorised by the bill. Upon an undertaking being given by the petitioners to confine themselves to these questions in their opposition to the bill, a limited *locus standi* was allowed to the petitioners for this purpose.

The *locus standi* of the petitioners (6) was objected to on the following grounds: (1) the petition does not allege, nor is it the fact, that the bill contains any provisions giving power to take any lands or other property of which the petitioners are owners, lessees, or occupiers; (2) the paragraphs of the petition numbered 4 to 8, both inclusive, the accuracy of which the promoters do not admit, are not such as to entitle the petitioners to be heard against the bill; (3) the petitioners are not entitled to be heard in respect of any apprehended injury arising from the construction of the railway; (4) the petition does not disclose any facts or circumstances which according to practice

entitle the petitioners to be heard against the preamble or the clauses of the bill.

Soutter, parliamentary agent (for petitioners (6)): No lands belonging to the petitioners are taken, but this is a question of injuriously affecting. The limits of deviation are carried round the north and west sides of the old parish church at Leicester. Between the centre line and the church is Leicester Castle, and immediately adjoining the church is the castle yard, and no buildings can at present be placed on this land so that the light to the church is uninterrupted. The wide limits of deviation would enable the company to make their railway close up to the west side of the church, and they might place station buildings there, and so interfere with the light. We do not petition against the general policy of the bill, but we object to the construction of the railway as proposed at this point, and our objections are these, that buildings may be placed near to the church, and that the access to the north and west doors may be interfered with, and the nearer the line is placed to our church the greater will be the annoyance by vibration, noise, and so forth, and we submit that it should be placed as far away as possible, and we object to there being any railway buildings upon the castle site, or within the yard.

Pember, Q.C. (for promoters): Although petitioners were under similar circumstances refused a *locus standi* against the *Crystal Palace, &c., Railway Bill*, 1869 (1 Clifford and Stephens, 45), and the *Hull, Barnsley, &c., Railway and Dock Bill*, 1880 (2 Clifford and Rickards, 247), I will concede a *locus standi* to the petitioners for the purpose of raising these points, but it must be distinctly understood that I do not agree to a *locus standi* that would give them a right to go against the policy of making of the line at all, or that I concede those palliatives; they are matters for argument.

Soutter: I only wish for a *locus standi* against so much of the bill as relates to Railway No. 3, in order to protect this church against structural injury from vibration and annoyance from noise during services, against obstruction of access to the north and west doors, and interference with light and air by the erection of a station or buildings on the site of the castle or yard.

Pember: It shall be open to the petitioners to raise these points.

The CHAIRMAN: That is already understood, and the petitioners are not to ask that this Railway No. 3 should be left out of the scheme altogether. There will be the short-

hand writer's note of to-day to refer, and on those conditions we *Allow* the Petitioners a limited *Locus Standi*.

Agents for Petitioners (6), *Durnford & Co.*

Petition of (7) THE TOWCESTER AND BUCKINGHAM RAILWAY COMPANY.

The petitioners claimed to be heard on the ground that one of the railways authorised by the bill would compete with their railway for traffic between Aylesbury, Buckingham, and London; and stated as an additional reason for their being heard that the proposed railway in question was the same as the railway sought to be authorised by the *Worcester and Broom Railway Bill*, 1889, in which year they were also promoting a bill for their authorised railway, and that the bills were heard together as competing bills, their own bill being passed and that of the Worcester and Broom railway company being rejected by the Committee. They claimed to be heard generally, on the ground of competition, but it was pointed out that the petitioners' railway was merely a local line, and could not be said to compete with the through railway proposed by the bill, the real competition for through traffic being between the proposed railway of the promoters and the London and North-Western railway company. The Court, after hearing arguments, held that the petitioners were not entitled to be heard upon the ground of the alleged competition.

Locus Standi Disallowed.

Agents for Petitioners (7), *Rees & Frere.*

Agents for Bill, *Martin & Leslie.*

MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (VARIOUS POWERS) BILL.

Petition of THE GREAT WESTERN RAILWAY COMPANY.

9th April, 1891.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Mr. HEALY, M.P.; and the Hon. E. CHANDOS-LEIGH, Q.C.)

Railways, Authorised and Constructed—Subscription to, by Competing Company—Working Agreement with one Company Authorised by Bill—Power of Petitioners to compel Exchange of Running Powers under previous Acts—Alteration of Status.

The bill empowered the promoters to subscribe to the undertakings of the Wrexham, Mold, and Connah's quay railway company (in the bill called "The Wrexham Company") and the Wrexham and Ellesmere railway company (in the bill called "The Ellesmere Company"), such subscriptions to carry with them the usual power of shareholders as to voting, and also to enter into working and other agreements with the latter company. The Wrexham company's railway had been constructed for a considerable time, but that of the Ellesmere company, although authorised, had not yet been constructed. The petitioners were the owners of a system of branch railways in connection with their own main line, by means of which and of facilities over the railways of other companies, they accommodated the general and especially the mineral traffic of the district served by the existing and authorised railways of the Wrexham and Ellesmere companies, and they complained that the effect of the bill would be to give the promoters a preponderating influence in the management of the traffic coming from the railways of the Wrexham and Ellesmere companies (of which traffic they would, under existing circumstances, receive a share), and so introduce a new element into the competition between the promoters and themselves. They also relied upon certain provisions in the Wrexham, Mold, and Connah's Quay Railway Acts, 1862 and 1864, which enabled them to compel the Wrexham company, if called upon, to exchange mutual running powers and traffic facilities over certain portions of their respective systems. The exercise of this option would, the petitioners contended, be interfered with by the control given by the bill to the promoters over the Wrexham company's undertaking:

Held, that the bill affected the existing *status* of the petitioners and their relations to the promoters in such a manner as to entitle them to be heard against it.

The *locus standi* of the petitioners was objected to on the following grounds:—

(1) the petitioners do not allege in their petition nor is it the fact that any lands, houses, or other property belonging to the petitioners will be taken or interfered with under the powers of the bill; (2) the bill will not enable the promoters to compete with or divert traffic from the petitioners' railway to a greater extent than they are able to do at present; (3) no new competition will be created, and if any diversion of traffic can be shown as likely to arise, it will not be to such an extent as to give the petitioners the right to be heard on their petition; (4) the bill contains no provisions whereby any of the powers and enactments contained in the Wrexham, Mold and Connah's Quay Railway Act, 1862, or in the Wrexham, Mold and Connah's Quay Railway (Extension) Act, 1864, referred to in the petition are or can be in any way altered or affected; (5) the power proposed to be given to the promoters by the bill to subscribe a further sum of money towards the undertaking of the Wrexham, Mold, and Connah's quay railway company is a matter which cannot affect the petitioners, and against which they have not, according to the practice of Parliament, any right to be heard; (6) the agreement between the Wrexham, Mold, and Connah's quay railway company and the promoters referred to in the petition is not proposed to be confirmed or in any way dealt with by the bill, and is not a matter which can give them any right to be heard against the bill according to the practice of Parliament; (7) the power proposed to be conferred on the promoters by the bill to subscribe a sum of money towards the undertaking of the Wrexham and Ellesmere railway company and the power to enter into working and traffic agreements between the promoters and that company are not matters which affect the petitioners or against which they have, according to the practice of Parliament, any right to be heard; (8) the petitioners do not allege any ground in their petition, nor have they any interest, which entitles them to be heard on their petition against any of the provisions of the bill according to the practice of Parliament.

Pember, Q.C. (for petitioners): The circumstances connected with this case are of a somewhat intricate character, as are also the relations of the different railway companies affected by the bill. The bill is an omnibus bill, but the clauses to which we object are clauses 47, 49, and 51, which are as follows: (47.) "The company," that is, in this and the other clauses, the Manchester, Sheffield, and Lincolnshire railway company, "may with the authority of three-fourths of the votes of their share-

holders present in person or by proxy at a general meeting of the company specially convened for that purpose from time to time subscribe in addition to any money they are already authorised to subscribe towards the undertaking of the Wrexham company," that is, the Wrexham, Mold and Connah's quay railway company, "any sums which they may think fit towards the undertaking of that company not exceeding in the whole the sum of one hundred thousand pounds and may take and hold shares in the capital of that company in respect of such subscription and may with the like authority contribute and apply in payment thereof any of the moneys which they now have in their hands or which they have power to raise by virtue of this or any other Act relating to the company and which may not be required for the purposes to which such moneys are by any such Act made specially applicable, and shall in respect of the sum subscribed by the company and the corresponding shares have all the powers, rights and privileges and be subject to all the obligations and liabilities of proprietors of shares in that company: Provided always that the company shall not sell, dispose of or transfer any of the shares for which they may so subscribe." (49.) "The company may with the authority of three-fourths of the votes of their shareholders present in person or by proxy at a general meeting of the company specially convened for that purpose from time to time subscribe towards the undertaking of the Ellesmere company (that is to say, the Wrexham and Ellesmere railway company) any sums which they may think fit not exceeding in the whole fifty thousand pounds and may take and hold shares in the capital of that company in respect of such subscription and may with the like authority contribute and apply in payment thereof any of the moneys which they now have in their hands or which they have power to raise by virtue of this or any other Act relating to the company and which may not be required for the purposes to which such moneys are by any such Act made specially applicable, and shall in respect of the sum subscribed and the corresponding shares have all the powers, rights, and privileges and be subject to all the obligations and liabilities of proprietors of shares in that company: Provided always that the company shall not sell, dispose of or transfer any of the shares for which they may so subscribe." (51.) "The company on the one hand and the Ellesmere company on the other hand may, subject to the provisions of Part III. of the Railways Clauses Act, 1863, as amended or varied by the Railway and Canal Traffic Acts, 1873 and 1888, from time to time enter into and carry into

effect and rescind agreements with respect to the following purposes or any of them (that is to say):—The working, management and maintenance by the company of the railways and works of the Ellesmere company or any part or parts thereof; the management, regulation, interchange, collection, transmission, and delivery of traffic upon, or coming from or destined for the railways of the contracting companies or either of them; the supply and maintenance, under any agreement, for the railways of the Ellesmere company worked and used by the company, of engines, stock, plant, and machinery necessary for the purposes of any such agreement; the fixing, collection, payment, appropriation, apportionment, and distribution of the tolls, rates, charges, income, and profits arising from the railways and works of the Ellesmere company or any part thereof; the employment of officers and servants; the appointment of joint committees for the purposes of any such agreements." The object of the subscriptions and working agreements authorised by these clauses is to give the Sheffield company a preponderating influence in the affairs of the Wrexham and Ellesmere companies, and, in the case of the latter company, the control of its railways. The result in the case of the Wrexham company will be to prevent the petitioners from availing themselves of the power of compelling that company to exchange mutual running powers and traffic facilities with them over certain portions of their respective railways which they, the petitioners, possess under sections 45, 46, and 47 of the Wrexham, Mold, and Connah's Quay Railway Act, 1862, and sections 28, 29, and 30 of the Wrexham, Mold, and Connah's Quay Railway (Extension) Act, 1864. The effect of those sections is correctly stated in paragraphs 17, 18, 19, and 20, of our petition, as follows:—(17.) "By the Wrexham, Mold, and Connah's Quay Railway Act, 1862, it was enacted that the Wrexham company on the one hand and your petitioners the London and North-Western, the Buckley, and the Wrexham and Minera railway companies respectively on the other hand, shall from time to time afford to each other all reasonable and proper facilities for the due interchange, accommodation, protection, and direct and speedy transmission of, and shall accordingly interchange, accommodate, protect, or directly and speedily transmit on their respective railways or any part thereof, any traffic passing or intended to pass over their own and each other's railways respectively, and which is from time to time tendered to the Wrexham company or the respective railway companies for transmission on their own respective railways or any parts thereof.

(18.) "By the said Act it was also enacted that whenever your petitioners shall require the Wrexham company to exchange mutual running powers with them between the junction of the Plas Madoc branch with the main line of your petitioners' railway near Ruabon and the junction of the railway with the Buckley railway, the Wrexham company shall either enter into an agreement as to the terms on which such running powers shall be granted or, if the said companies cannot agree, it shall be referred to arbitration under the Railway Companies Arbitration Act, 1859, to decide on what terms and conditions and for what period it shall be lawful for the said two companies reciprocally to run with their engines, carriages, and wagons over each other's railways between the two points aforesaid." (19.) "By the Wrexham, Mold and Connah's Quay Railway (Extension) Act, 1864, it was enacted that the Wrexham company on the one hand, and the London and North-Western railway company, your petitioners, the Wrexham and Minera railway company, and the Oswestry and Newtown railway company respectively on the other hand, shall from time to time afford to each other all reasonable and proper facilities for the due interchange, accommodation, protection, and direct and speedy transmission of, and shall accordingly interchange, accommodate, protect, or directly and speedily transmit on their respective railways or any parts thereof any traffic passing or intended to pass over their own and each other's railways respectively, and which is from time to time tendered to the Wrexham company or the before-mentioned companies or any of them for transmission on their own respective railways or any parts thereof." (20.) "And by the same Act it was also enacted (*inter alia*) that the Wrexham company may run over, work, and use with their engines, carriages, and servants and for the purpose of traffic of all kinds so much of the Brynmalloy branch of your petitioners' railway as lies between the point of junction therewith of the thirdly described railway by the Act authorised and the terminus of the said Brynmalloy branch railway at the Brynmalloy colliery * * * and the stations, sidings, and conveniences at Wheatsheaf on the Wheatsheaf or Minera branch railway of your petitioners or any or either of them." The object of the Sheffield company in subscribing to the undertaking of the Wrexham company is shown by their promotion of a bill in 1890, which, *inter alia*, confirmed an agreement between themselves and the Wrexham company for the working, maintenance, use, and management of the Wrexham company's undertaking by themselves. The petitioners and others

opposed the bill before a Committee of the House of Lords and in consequence of the decision of that Committee, refusing to confirm the said agreement, unless running powers were conceded to the London and North-Western railway company, the promoters withdrew the agreement from the bill and the petitioners were consequently prevented from proceeding with their opposition and asking for similar running powers. The object of the bill is really the same as that of the agreement, which, in addition to the working powers, conferred on the Sheffield company the same rights over the railways of the Wirral company or other railways giving access to Birkenhead, including the Seacombe, Hoylake, and Deeside railway, as those possessed by statute or agreement by the Wrexham company, that object being to give the Sheffield company a preponderating influence in the management of the affairs of the Wrexham and Ellesmere companies. The Sheffield company is not only the owner of a railway from Manchester to Sheffield, Retford, Lincoln and Great Grimsby, but it communicates at Manchester with the railways of the Cheshire lines committee of which it is a member, and therefore by means of those railways is at Chester. We allege in paragraphs 15 and 16 of our petition:—

(15.) "Your petitioners have at great cost constructed an extensive system of branch railways in connection with their main line from Shrewsbury to Chester throughout the mineral districts in which the railways of the Wrexham company are constructed, and by the accommodation provided by your petitioners they have not only developed the mineral resources of those districts but liberally met the requirements of the traffic, as these have from time to time arisen, and they are able by means of their railways and the Chester and Birkenhead railway (of which they are joint owners) to afford facilities for the shipment and transshipment of coal and other articles on the river Dee, and also what is of much importance to afford the best means of communication not only with Birkenhead, which is the great port of export for the mineral produce of those districts, but also with Chester, Warrington, Manchester, and other places." (16.) "In like manner your petitioners by their own lines, and by the lines either worked or leased by them or under powers possessed by them over and in relation to the railways of other companies, are able amply to accommodate the whole general traffic of the districts before referred to including the districts northward and southward of Wrexham." We are therefore competitors with the Sheffield company in these mineral districts, and the effect of the bill will be to introduce new com-

petition by means of the Wrexham and Ellesmere companies, and to interfere with the exercise of the power we possess under the Wrexham Company's Acts of 1862 and 1864 of exchanging mutual running powers and facilities with that company. I should add that the railway of the Ellesmere company is authorised but not yet constructed. When constructed it will extend from the Wrexham company's railway at Wrexham to the Cambrian company's railway at Ellesmere.

Mr. HEALY: Is it the fact that under existing Acts the Sheffield company has running powers over the Wrexham company's railway, but not over the Ellesmere railway?

Pember: Yes. We do not object to their running powers over the Wrexham company's railway, because we can get the same under the Act of 1862. What we object to is a hostile element in the councils of the Wrexham and Ellesmere companies, which will stop that company from giving us any share of their traffic.

The CHAIRMAN: Has your attention been called to the case of the *Lanarkshire and Ayrshire Railway Bill*, 1885 (Rickards and Michael, 34)?

Pember: Yes, but I think it was a different case.

The CHAIRMAN: There was a contract there, which made it a different case to this.

Conard (for promoters): I deny the right of the petitioners to refer to the agreement scheduled to our bill of last year, which is not revived by the bill, or in any way before the Court. There is no power of making, working or other agreements with the Wrexham company, but merely a power of subscription, with a corresponding right to vote like any other shareholder, and the amount authorised to be subscribed is quite small. With regard to the Ellesmere company there is a general suggestion in the petition of competition with the petitioners, but between what points it is not stated, and could not have been stated; and, as a matter of fact, when the Ellesmere railway was authorised, the *locus standi* of the petitioners was disallowed.

Pember: Because it was promoted merely as a local line. There was no power in the bill to make working agreements, or give mining powers.

The CHAIRMAN: The petitioners are contented with the *status quo* and contend that the powers of subscription, and in the case of the Ellesmere company of working, disturb that *status*. In one case the subscription is for a railway already constructed and in the other for a railway about to be constructed. One understands at in the case of a railway not yet

constructed the money may be required to bring it into existence, but why should there be £100,000 subscribed to an existing railway, unless to give control?

Pember: What I say is that these subscriptions with voting power will alter the relative positions of the Great Western and the Sheffield companies.

Mr. BONHAM-CARTER: Do you know what proportion to the capital of the Wrexham company this £100,000 bears?

Pember: Roundly speaking it is a tenth of the share capital, and in the case of the proposed subscription of £50,000 to the Ellesmere company, that represents between a third and a fourth of the share capital.

The CHAIRMAN: The *Locus Standi* of the Great Western Company is *Allowed*.

Agent for Petitioners, *Mains*.

Agents for Bill, *Wyatt & Co.*

NELSON CORPORATION BILL.

Petition of (1) JOHN BARROWCLOUGH.

25th February, 1891.—(Before Mr. PARKER, M.P., Chairman; the Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Repeal of Clause in Previous Act for Protection of Petitioner—Money Payments to Millowners and Riparian Owners in lieu of Compensation Water—Agreement between Petitioner and Promoters superseding Protective Clause—Alleged Fraud in obtaining Agreement—Absence of Prima Facie Evidence of Fraud—Remedy at Law.

Clause 24 of the bill repealed sect. 10 of the Nelson Local Board Act, 1888, which had provided for compensation water being delivered, from reservoirs to be constructed under the powers of the Act, into a certain stream in place of water abstracted from certain other streams named in the section. The petitioner was a millowner on one of these streams, and had withdrawn his opposition to the bill for the Act of 1888 upon the insertion of sect. 10 in that bill. He now sought to oppose the repeal of sect. 10 by the present bill. The promoters alleged that he, in common with other persons whose interests had been affected by sect. 10 of the Act of 1888, had entered into agreements with them, the corporation (in 1888 the local

board) of Nelson, to accept a money payment in lien of the compensation water provided for by sect. 10 of the Act of 1888. The agreements with the petitioner were produced, and he admitted having signed them, but alleged that his signature was obtained by fraud, he being, in fact, intoxicated at the time of signing them and ignorant of what he was doing. Upon being informed of the present bill being proceeded with in Parliament, he had commenced an action in the Chancery Division of the High Court to have the agreements set aside on the ground of fraud, and he contended that if he were not heard before the Committee on the bill, and sect. 10 of the Act of 1888 were repealed before the case in the Chancery division was decided, he would be unable to obtain any redress. Counsel for the promoters argued that the question of fraud was one which neither the Court nor the Committee on the bill could deal with, and that the remedy of the petitioner, if he was entitled to redress, was in a court of law; and that as he had signed more than one agreement, and the agreement he most objected to was in the same form as other agreements entered into with the other persons interested in the same streams as himself, there was no *prima facie* evidence that the agreement between himself and the corporation had been obtained by fraud: *Held*, that the petitioner was not entitled to be heard against the bill.

The *locus standi* of the petitioner was objected to on the following grounds: (1) the promoters deny that any water rights of the petitioner will be taken or interfered with under the powers of the bill, as alleged in paragraph 2 of the petition, or that any provisions contained in a previous Act for the protection of the petitioner will be repealed except sect. 10 of the Nelson Local Board Act, 1888, and as to that section the petitioner's rights and interests thereunder have ceased as hereinafter appearing; (2) the petitioner has entered into two several agreements with the promoters or their predecessors the local board, dated respectively the 15th February, 1889, and the 21st November, 1889 (to which the promoters crave leave to refer), whereby he

accepted annual rent-charges in lieu of the compensation water to which as a riparian owner, and a millowner respectively he would or might have been entitled under the said sect. 10 and as full compensation for all water which the promoters might, could or should at any time impound, take, or appropriate and use from the brooks, streams, waters and springs authorised by the said Act to be taken, and in full satisfaction of any water rights or privileges he or his tenants might have under the said Act, and he thereby agreed to the abandonment of the compensation reservoirs Nos. 5 and 6 referred to in the petition, and the 10th paragraph of the petition, so far as it alleges that the petitioner has not agreed with the local board or the corporation to accept certain money payments in lieu of such compensation water, is untrue; (3) even if the bill could have the effect, stated in paragraph 11 of the petition, which the promoters deny, the petitioner would not on that ground be entitled to be heard against the bill, and the promoters deny that under the bill the provisions of a parliamentary bargain will be repealed at the instance of one party to the bargain; (4) sect. 11 of the said Act of 1888, referred to in paragraph 12 of the petition, is not altered or affected by the bill; (5) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioner is entitled to be heard against the bill.

Pember, Q.C. (for petitioner): In 1888 the Nelson corporation, being at that time the Nelson local board, obtained an Act, which entitled them to make certain reservoirs and impound certain waters, and provided for compensation by means of compensation reservoirs to turn a certain amount of pure water into the stream which was going to be denuded. Subject to the general rights at law that anybody interested in the stream has in case the compensation water has failed, the Act provided specially for persons who were more particularly interested in the stream, and amongst others so provided for was the petitioner, who is a millowner and manufacturer, by sect. 10 of the Act, a further special provision, sect. 11, being also inserted for his benefit. In the face of S. O. 184, relating to compensation water, the promoters by clause 24 of the bill now seek to repeal sect. 10 of the Act of 1888 with reference to compensation water. Paragraphs 7 and 8 of the petition are as follows: (7.) "The said bill of 1888 passed into law as 'The Nelson Local Board Act, 1888' (hereinafter called 'The Act of 1888'), and that Act contained the provisions hereinafter set out for affording a supply of compensation water to your petitioner

and the other persons interested in the waters of the Barrowford Beck, and also for supplying compensation water to your petitioner in respect of the said springs on the Higher Oaklands farm. Your petitioner presented a petition against the said bill, but withdrew the same in consequence of the said provisions." (8.) "Sect. 10 of the Act of 1888 provided as follows: 'With respect to the water to be taken, and the compensation water to be afforded by the Local Board, the following provisions shall have effect (that is to say):

(1.) Before the local board shall, by means of the works by this Act authorised, or any of them, appropriate, take and use for the purposes of the Nelson Acts, water from the Ogden Water, or any of the tributaries thereof, they shall cause to flow or be discharged into the Black Moss Water from the reservoir No. 5, by this Act authorised and at a point not more than one hundred and fifty yards below the reservoir, not less than three hundred thousand gallons of water during every day of twenty-four hours. (2.) Before the local board shall, by means of the works by this Act authorised, and numbered 3 and 6 respectively, appropriate, take and use, for the purposes of the Nelson Acts, water from the Ogden Water, or any of the tributaries thereof, they shall cause to flow or be discharged into the Black Moss Water from the said reservoir No. 6, and at a point not more than one hundred and fifty yards below that reservoir, not less than seven hundred and eighty-two thousand gallons of water during every day of twenty-four hours, such last-mentioned quantity to be inclusive of or in substitution for, and not in addition to the three hundred thousand gallons hereinbefore directed to be discharged from the said reservoir No. 5. Provided nevertheless that until the local board construct the said reservoir No. 3, and commence to deliver as compensation water the said quantity of seven hundred and eighty-two thousand gallons per day, they shall not take from the Ogden Water or the tributaries thereof, more than six hundred thousand gallons per day, to be passed through a gauge or measuring chamber, &c." The said clause contained further provisions for the protection of your petitioners, and the other parties interested in the Ogden Water and its tributaries, which include the said Barrowford Beck. The petition alleges in paragraph 10, that "Your petitioner is one of the persons entitled to, and interested in, the compensation water, and the said statements in the preamble of the Bill are, so far as he is concerned, untrue and unfounded. Your petitioner has not agreed with the local board or the corporation to accept certain money payments in lieu of such compensation

water, and he altogether objects to the repeal of sect. 10, and to the abandonment of the compensation reservoirs."

The CHAIRMAN: It looks very much as if it turned upon a question of fact.

Bidder, Q.C. (for promoters): That is the only point of the case. If that last allegation is true, the petitioners have an undoubted *locus standi*.

Pember: The facts are these. The corporation employed a certain person to go round and obtain settlements with people who were interested in having these compensation reservoirs made, and he did, no doubt, obtain the petitioner's signatures to two documents. Where the first signature was obtained we do not know, but the second was obtained at a place called Rough Lee, where the petitioner was holding a rent audit, and his recollection of what happened was merely this: that he was asked to sign an agreement for laying a pipe through his land, the fact being that he was, unfortunately, not sober at the time he signed the agreement. The moment the information was obtained that these documents were in existence, and who the person was who procured the signature to them, the petitioner not being aware of how he came to sign them, a writ was issued in the Chancery Division to set aside these agreements on the ground of fraud. If this bill is passed without the petitioner being heard and getting a clause protecting his rights, if any, there will be no use in his going on with the action in Chancery. I submit that the petitioner is entitled to a *locus standi* to provide for the possible contingency of these agreements being held to be void on the ground of fraud. The petitioner is here and will give evidence in support of his allegation if the Committee wish to call him.

The CHAIRMAN: You wish to establish before the Committee that there is at least presumption of fraud, and that there is an action pending upon that presumption.

Pember: Yes. I admit that if the petitioner knew what he was doing when he signed these agreements he would be bound by them. I submit we are also entitled to a *locus standi*, because according to one of the clauses in the first agreement if anybody opposes the bill in Parliament the agreement has no effect, so far as compensation is concerned, and this bill is admittedly opposed.

Mr. CHANDOS-LEIGH: Were there other agreements of the same nature entered into with others?

Bidder: Yes, here are eleven more—[handing them in]—precisely the same, except that

the consideration money varies according to the value of the mill affected.

The CHAIRMAN: We are told that these agreements were signed by the petitioner under special circumstances, but we find other precisely similar agreements signed by other people not under such circumstances.

Pember: The Court of Chancery will set aside agreements which are obviously one-sided and unfair, and it may perhaps be that some other people as well as the petitioner were foolish enough to sign this agreement.

Bidder, (in reply): I take this preliminary point that as I have traversed the allegation of the petitioner that he was in the condition described when he entered into these agreements, he is bound under these circumstances by the practice of this Court to give some evidence of it, and if he does not prove it there is an end of the case, but reserving this objection, I submit that whatever evidence he gave it would be entirely contrary to the practice of this Court to give a *locus standi* in a case like this. The petitioner suggests that when he signed this agreement he was in a certain condition, so that he did not understand what he was doing, and the agreements were therefore obtained from him by fraud. The agreements as they now stand are legal documents, and the only tribunal that can try their validity is the Chancery Division, and the Court would go into the question what damages he had sustained directly or indirectly by reason of fraud if proved.

The CHAIRMAN: Among those damages he could argue that he had been damaged by being unable to oppose this bill, and he might get a pecuniary remedy.

Bidder: I need not say that no case parallel to this has ever come before this Court before, but I say that these agreements being produced before you absolutely oust the petitioner's *locus standi*. If the Chancery Division are satisfied that the petitioner has been defrauded they can give both damages and an injunction, but I submit there is not the slightest *prima facie* evidence to support this allegation of fraud. Not only is the petitioner's agreement before you, but a dozen others all in the same form. There is nothing in this bill that proposes to repeal sect. 11 of the Act of 1888.

The CHAIRMAN: I think the point you are putting is important that the presumption of fraud is very much diminished by the fact that the agreements appear to be almost identical. Moreover from a clause in them they seemed to be concurrent, and only to be valid if they are all signed by the several parties interested in the compensation water. Then again all these

agreements seem to be written out in the same hand, the amounts being in the same handwriting as the body of the agreement. If it is suggested that the amount was filled in while Mr. Barrowclough was in a state of intoxication it might be answered that they are all prepared in exactly the same handwriting.

Bidder: So far from there being any truth in the suggestion of the petitioner being taken at a disadvantage, the thing had been negotiated at repeated interviews; these agreements were separated by six months interval, and there was another agreement between the two, an agreement dated July, 1889, by which the corporation were allowed to lay a pipe across his land. There were three separate agreements, and the petitioner asks you to believe that he remembers none of these agreements. The petitioner has gone to a court of law, and that is the place for him to fight out this matter, and the Court will protect him by giving him compensation by damages or by an injunction, or both, and apart from the question of evidence I submit that the petitioner is not entitled to a *locus standi*.

The CHAIRMAN: The *Locus Standi* of the Petitioner is *Disallowed*.

Agents for Petitioner, *Shaw, Tremellen and Kirkman*.

Petition of (2) MESSRS. HENRY HARTLEY AND SONS; (3) OWNERS AND OCCUPIERS OF MILLS ON THE RIVER CALDER; (4) PADHAM AND HAPTON LOCAL BOARD; and (5) CORPORATION OF BURNLEY.

Repeal of Sections in Previous Act as to Compensation Water and Reservoirs—Money Payment to Millowners, &c, in lieu of Compensation Water—Riparian Owners, Millowners, and Sanitary Authorities—Streams below Point of Return of Impounded Water, how far affected—S. O. 14 [Notices when it is Proposed to Abstract Water from Stream]—S. O. 134 [Municipal Authorities and Inhabitants of Towns]—S. O. 134 A [Local Authorities to have Locus Standi against Lighting and Water Bills]—S. O. 184 [Compensation Water].

The bill so far as it repealed sect. 10 of the Nelson Local Board Act, 1888, providing

for compensation water to persons interested in certain streams named in that section, and in so far as it provided for the abandonment of certain compensation reservoirs authorised by that Act, and for money payments to such persons in lieu of compensation water, was also opposed by (2 and 3) certain riparian owners and millowners and (4 and 5) two sanitary authorities. They pointed out that the bill did not repeal sect. 9 of the Act of 1888, by which the promoters were empowered to appropriate the whole of the water of the streams in which they were interested as riparian owners, millowners, and sanitary authorities, but did repeal the provisions of that Act relating to the construction of compensation reservoirs and the delivery of compensation water to persons affected. The petitioners referred to S. O. 14, 134, 134A and 184, in support of their claim to be heard, and claimed to be heard both as to the quality and quantity of the water which would be returned into the river and which they were interested. Counsel for the promoters argued that inasmuch as the property and districts of all the petitioners were below the point at which the water abstracted under sect. 9 of the Act of 1888 would be returned into the river and streams flowing through their property and districts they were really unaffected by the bill, and that they were not entitled to be heard against the repeal of sect. 10 of the Act of 1888, as it was not inserted for their benefit, but for the benefit of riparian owners situated between the point of abstraction and the point of return of the water impounded under sect. 9 of the Act:

Held, however, that all of the petitioners (2, 3, 4 and 5) were entitled to be heard upon their petitions against the bill.

The *locus standi* of the petitioners (2 and 3) was objected to on similar grounds, namely: (1) the only provisions of the bill to which the petitioners object by their petition are those contained in clauses 23, 24, and 25, relating to the abandonment of certain waterworks authorised by the

Nelson Local Board Act, 1888, the repeal of sect. 10 of that Act and the substitution of money payments for compensation in water under that section; (2) the statements in the petition, even if accurate, which the promoters do not admit, disclose no such rights or interests, nor have the petitioners in fact any such rights or interests in the waters of the Ogden Water, the Water Gate, or the Black Moss Water referred to in paragraphs 5, 6, and 7 of the petition as to entitle them to be heard against the bill; (3) even if the petitioners have any such rights or interests in the said waters as alleged (which the promoters deny) such rights or interests are not affected by the bill; (4) the only waters which under the said Act of 1888 as proposed to be amended by the bill the promoters will be able to divert are those of the Ogden Water, and the said waters are intended to be diverted for the supply of the promoters' district, which is situate in the watershed of the River Pendle above the petitioners' mills, works and lands. Such diverted waters return to the said stream called Pendle Water, a considerable distance above the petitioners' mills, works and lands, which are situate on the river Calder below its junction with the said Pendle Water, and the petitioners are not so affected by the diversion of the said waters or so interested in the compensation water provided for by sect. 10 of the said Act of 1888 in respect of such diversion as to entitle them to be heard against the repeal of that section or against the bill; (5) the bill does not confer upon the promoters any new powers of taking or diverting waters or any powers affecting the flow of water in the river Calder, so as to entitle the petitioners to be heard against the bill; (6) even if some of the petitioners did receive notice of the bill for the Act of 1888, that fact would not entitle them according to the practice of Parliament to be heard against the present bill; (7) the petition discloses no ground; upon which according to the practice of Parliament the petitioners are entitled to be heard against the bill.

The *locus standi* of the petitioners (4) was objected to on similar grounds to those contained in objections 1, 2, 3, 5, 6 and 7 to the *locus standi* of the petitioners (2 and 3); and because (4) the only waters which under the Act of 1888 as amended by the bill the promoters will be able to divert are those of the Ogden Water, and those are intended to be diverted for the supply of the promoters' district, which is situate in the watershed of the river Pendle above the petitioners' district. Such diverted waters return to the said stream called Pendle Water a considerable distance above the petitioners' district

which is on the river Calder below its junction with the said Pendle Water, and the petitioners and the inhabitants of their district are not so affected by the diversion of the said waters or so interested in the compensation water provided for by sect. 10 of the said Act of 1888 in respect of such diversion as to entitle them to be heard against the repeal of that section or against the bill.

The *locus standi* of the petitioners (5) was objected to on similar grounds to those contained in objections 1, 2, 3, 5, 6, and 7 to the *locus standi* of the petitioners (2 and 3); and (4) because the only waters which under the said Act of 1888 as proposed to be amended by the bill the promoters will be able to divert are those of the Ogden Water, and the said waters are intended to be diverted for the supply of the promoters' district, which is situate in the watershed of the river Pendle above the petitioners' town and district; such diverted waters return to the said stream called Pendle Water a considerable distance above the petitioners' town and district, and also above the lands and sewage works of the petitioners referred to in paragraph 12 of the petition, and the petitioners and the inhabitants of their town and district are not so affected by the diversion of the said waters or so interested in the compensation water provided for by sect. 10 of the said Act of 1888 in respect of such diversion as to entitle them to be heard against the repeal of that section or against the bill.

Worsley-Taylor, Q.C. (for (2) Messrs. Henry Hartley & Son, and (3) owners and occupiers of mills on the river Calder): The only difference between these petitioners is that the owners and occupiers are a little lower down the brook. We are in both cases riparian owners and mill-owners. We ask for a *locus standi* against clauses 23, 24, and 25 of the bill, which propose to repeal certain provisions of the Nelson Local Board Act, 1888, which were inserted for the benefit of persons interested in the river Calder and its tributaries, and among others the petitioners. Those clauses of the bill are as follows:—(23.) "The corporation may and shall abandon and relinquish the construction of the reservoirs Nos 5 and 6 and works connected therewith authorised by the Act of 1888." (24.) "Sect. 10 (provision as to compensation water) of the Act of 1888 is hereby repealed." (25.) "The corporation may apply to the payment of any capital sum or sums or to the redemption of any annual sum or sums which they have agreed or may agree to pay to any person or persons in lieu of sending down compensation water as provided by the said sect. 10 of the Act of 1888 so much as may be necessary of any moneys which they are

by that Act empowered to borrow for waterworks purposes, and they may exercise for the purposes aforesaid such borrowing powers accordingly." In the Act of 1888, sect. 10 and the sub-sections thereto, certain carefully considered provisions were inserted for the protection of persons on these streams, and amongst others the petitioners, and the question to be considered is whether the proposal in the bill to repeal this clause entitles us to a *locus standi*. The promoters admit that we have a right in this water, and that it will be abstracted from the river, but they say that it will be returned into the river above our property, and we shall still be able to use it, and are not therefore entitled to be heard. But the bill does not propose to repeal sect. 9 of the Act of 1888, by which the promoters "may from time to time for the purposes of the Nelson Acts, divert, impound, and take by compulsion or otherwise, and may appropriate and use all the water of the said brooks or streams," including the tributaries of the river Calder, in which we are interested. The promoters will therefore have the right, if this bill is passed, to appropriate and use every drop of the water which we now are entitled to, and we desire to retain this right.

The CHAIRMAN: Suppose you got the whole of this water back, you might not get it at the time you wanted it.

Worsley-Taylor: No, and by sect. 10, subsect. 4 of the Act of 1888, it is provided that the flow of water shall be as nearly as possible continuous. What the bill proposes, therefore, to do is contrary to S. O. 184, relating to compensation water. Besides this the promoters intend to use this water, and they may return it into the river lower down in the form of sewage. I submit, therefore, that the petitioners are entitled to a *locus standi*, as the bill prejudicially affects their rights and interests.

Pember, Q.C. (for (4) the Padiham and Hapton local board): We are riparian owners and a sanitary authority whose district is ten miles from the site of the reservoirs provided for by the Act of 1888 and now sought to be abandoned by this bill, and we have under our jurisdiction the sanitary condition of a large district. The river Calder passes through our town and is in time of drought nearly dry. We did not oppose the Act of 1888 because it contained adequate compensation which Parliament afterwards increased, and this bill now proposes to abolish all that compensation.

Mr. CHANDOS-LEIGH: Are not the petitioners a local authority under S. O. 134A?

Pember: Yes, and I think under S. O. 134 as well.

Mr. CHANDOS-LEIGH: The promoters are re-

pealing everything connected with compensation water in the face of S. O. 184.

Pember : It cannot be seriously contended that the water after it has been used by a town is returned either in the same quantity or quality as before, and the petitioners are entitled to be heard against the provisions of this bill.

Balfour Browne, Q.C. (for (5) the corporation of Burnley) : We are nearer the source of the river than the local board of Padiham, and our town has a population of about 100,000, and we are the sanitary authority of our district. If this bill were one to appropriate waters to supply this town everybody using the waters of the stream would have a right to come and object to it under S. O. 14, and what reason is there why we should not be heard now, when after Parliament has given us in 1888 compensation water, the bill proposes to take away the consideration for being allowed originally to appropriate these waters.

Bidder, Q.C. (in reply) : I cannot find any case in which a similar question has arisen, nor do I remember any case in which a petitioner has been heard against the abstraction of water, who was below the point of return, as all the petitioners are. The fundamental principle, which underlies the right to a *locus standi*, is whether or not there is any reasonable apprehension that anything done under the bill may affect the rights of the petitioner or the rights of those whom he represents. None of the petitioners were persons interested under sect. 10 of the Act of 1888, or persons who were affected or injured by the power of taking water under that Act, or in whose behalf therefore the compensation clauses were inserted. We have for the past 15 months daily been abstracting water in defiance of sect. 10, and these petitioners have never taken steps to prevent us, which clearly shows they are not parties interested. They have no remedy and no rights. The petitioners are not interested as regards quantity, for by the law of gravity all the water that we deal with is necessarily returned to the stream above the petitioners' districts. As regards time, by nature the water goes down in time of flood and the stream is left dry in time of drought, and so far as we interfere with this it can only be beneficial to the petitioners, because if we store any of it we must store it in flood and give it out in drought. As regards quality the petitioners are not affected by the bill, for the pollution of Nelson goes down into the river Pendle now and did so in 1888, and polluted *pro tanto* every reach of the river below the outlet of the sewage works. That sewage was only diluted by such water as came down

the river, and whether this takes place in the sewers of Nelson or in the river outside Nelson makes no difference in the proportions of the compound that is produced.

Mr. BONHAM-CARTER : Is not this a different method for providing water for Nelson than that authorised by the Act of 1888 ?

Bidder : No, the bill takes away the provision for compensating those who would have been affected by the abstraction of the water, *i.e.*, those between the point of abstraction and the point of return, and the petitioners were not persons who in any sense could be interested. This is an abstraction of water at a certain point, but for the purposes of S. O. 14 it is not abstraction of water so far as people below the point, where we return it, are concerned.

Mr. CHANDOS-LEIGH : Did these petitioners have notice under S. O. 14 in 1888 ?

Bidder : Yes, I assume so. Clause 10 was negotiated with the millowners above the point of return and was inserted to satisfy them, and no one below the point of return attempted to oppose the bill. Before this Court will grant a *locus standi* it will see that there is some *prima facie* possibility of people being injured, but I submit that they cannot be injured because the water gets back to the stream before it reaches them.

Mr. BONHAM-CARTER : How far the interests of the petitioners are affected by your dealing with the natural direct flows of the river is surely a question for the Committee ?

Bidder : The river is not affected at all *quoad* the people below the point where the water is returned. It is for the Court to consider whether there is any foundation for the allegation that there will be interference.

The CHAIRMAN : The policy of Parliament in all these cases is to insure an equal and regular flow of the river, and in this case they have provided for it by the Act of 1888. This bill now seeks to repeal the clause providing it. That seems to me contrary to the policy of Parliament.

Bidder : The petitioners were not interested in 1888, and that being so, only those for whose interest the condition in sect. 10 was inserted have a right to protect their interest, and the other people below have nothing to say to it.

The CHAIRMAN : The *Locus Standi* of all the Petitioners is *Allowed*.

Agents for Petitioners (2, 3, & 4), *Lewin, Gregory & Anderson*.

Agents for the Petitioners (5), *Tahourdin and Hitchcock*.

Agents for Bill, *Sherwood & Co.*

NORTH BRITISH RAILWAY BILL.

Petition of PROPRIETORS, FEUARS, &C., IN DUNDYVAN ROAD, COATBRIDGE.

9th March, 1891.—(Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH Q.C.; and Mr. BONHAM-CARTER.)

Stopping up of Level Crossing over Railway—Owners, Lessees, and Occupiers—Loss of Access, and Depreciation in Value of Property—Alleged Agreement of Railway Company with Road Authority to make new Road and Foot Bridge—Agreement not Confirmed by Bill—Right of Petitioners to be heard against Bill as deposited—Practice.

Clause 18 of the bill empowered the promoters to stop up a level crossing across their railway in the neighbourhood of the petitioners' property, which they alleged would be injuriously affected and depreciated in value by the loss of access occasioned by the closing of the level crossing. The promoters stated to the Court that they had entered into an agreement with the road authority to make a new road near the level crossing, and to provide a foot bridge at the place where the level crossing now was. The petitioners objected, (1) that the substituted road would not form so good an access to their property as the level crossing at present afforded; (2) that the bill did not impose any obligation on the promoters to make a new road or foot-bridge, or confirm the alleged agreement with the road authority, and claimed to be heard against the bill as deposited:

Held, that they were entitled to be heard against clause 18 of the bill, and so much of the preamble as related thereto.

The *locus standi* of the petitioners was objected to on the following grounds: (1) it is not alleged in the petition, nor is it the fact

that any lands or property of the petitioners will or can be taken under the powers of the bill; (2) the petitioners are not the persons having the control or management of the road referred to in the petition, of which a portion is proposed to be stopped up under the powers of the bill; (3) the petition does not allege or disclose any such special estate, right or interest in the said road as entitles the petitioners to be heard against the bill, nor have they any greater or other interest in the said road than the general public using the same, and they are not entitled to be heard either on their own behalf or as representing the public; (4) the said road is a public road under the control of the proper authority of the district, who are the proper parties to be heard against the bill in respect of the said road, and they have not objected to the bill; (5) the apprehended injury to and interference with the property rights or interests of the petitioners alleged in the petition is not, nor is the apprehended inconvenience to the tenants and occupiers mentioned in paragraph 8 of the petition, a ground on which the petitioners are entitled to be heard against the bill, and the petition discloses no grounds upon which, according to the practice of Parliament, they are entitled to be heard against the bill.

Richards (for petitioners): The bill involves a serious alteration, as regards accessibility, in the conditions upon which the petitioners own or occupy houses, both as private residences and for trade purposes, in the neighbourhood of what is now a level crossing across the North British Railway. Clause 18 of the bill empowers the promoters to stop up the level crossing, and thereby to interfere with the access to our property, which will seriously affect our interests, and depreciate the value of the property. Clause 18 is as follows: When and so soon as the bridge now in process of construction by the road authority over the road known as the Dundyvan-road in the parish of Old Monkland in the county of Lanark has been completed and opened for public use the company may stop up the crossing on the level of such road by the railway, and all rights of way over so much of the said road as lies between the boundaries of the property of the company shall thereupon be extinguished and the site and soil of so much of the said road as shall be so stopped up and discontinued and the fee simple thereof shall be from the time of the stopping up thereof wholly and absolutely vested in the company for the purposes of their undertaking." The bridge referred to in that clause, which the promoters are under no obligation by the bill

to make, is a considerable distance away and would in no way compensate us for the loss of the local crossing which this bill seeks to stop up.

Bidder, Q.C. (for promoters): We have come to an agreement with the local board as the road authority, to make a new road and also a foot-bridge where the level crossing is now.

Richards: No such agreement is referred to in or confirmed by the bill, which as it stands contains no provision for providing a foot-bridge at this point. On the contrary, clause 18 provides that all rights of way shall be extinguished, and we claim to be heard against the bill as deposited.

Mr. CHANDOS-LEIGH: The *London and South Western Railway (Various Powers) Bill, 1883, on the petition of George Burton* (3 Clifford and Rickards, 313), seems to be almost on all fours with this case.

Bidder: In the face of that case I do not think I ought to occupy the time of the Court in asking them to shut out the petitioners from being heard against clause 18 of the bill.

The CHAIRMAN: The *Locus Standi* is *Allowed* limited to clause 18, and so much of the preamble as relates thereto.

Agents for Petitioners, *Lock & Goodhart.*

Agents for Bill, *Sherwood & Co.*

ROTHERHAM, BLYTH AND SUTTON RAILWAY BILL.

Petition of THE MANCHESTER, SHEFFIELD AND
LINCOLNSHIRE RAILWAY COMPANY.

2nd March, 1891.—(*Before Mr. PARKER, M.P.,
Chairman; Mr. SHIRESS WILL, Q.C., M.P.;
the Hon. E. CHANDOS-LEIGH, Q.C.; and Mr.
BONHAM-CARTER.*)

*Railway Companies—Same Land Scheduled
under Bill jointly promoted by Petitioners and
Third Railway Company—Limited or General
Locus—S. O. 133 [In what cases Railway
Companies to be heard]—Competition.*

The petitioners claimed to be heard (1) generally on the ground of competition with their own railway, which would arise from the construction of the railway proposed by the bill, and from a power conferred upon the promoters of making a working agreement with the Great Northern company; and (2) specially on the ground that the promoters scheduled for compulsory purchase the same land which they also scheduled in a bill jointly promoted by themselves and the Midland railway company:

Held, that they were not entitled to be heard (1) on the ground of competition, but were entitled to be heard as to ground (2) within the meaning of S. O. 133.

The *locus standi* of the petitioners was objected to on the following grounds: (1) it is not alleged in the petition nor is it the fact that the bill contains any provision for taking or using any lands or property of the petitioners or for running engines or carriages upon or across any railway of the petitioners; (2) the petitioners are not entitled, according to the practice of Parliament, to be heard against the provisions of the bill, authorising the promoters to enter into agreements with another company, but only in so far as it is proposed to authorise agreements with the petitioners; (3) no such competition with or diversion of traffic from the railways of the petitioners will or can be created under the powers of the bill as to entitle them, according to the practice of Parliament, to be heard against the same; (4) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard against the bill.

Worsley-Taylor, Q.C. (for petitioners): We ask to be heard, first, on the ground of competition. The line proposed by the bill will run from Rotherham to Sutton, where it will join the main line of the Great Northern between Doncaster and Retford. The petitioners' line runs from Rotherham to Sheffield, and thence *via* Kiverton Park and Worksop to Retford, and

there joins the Great Northern railway. Secondly, we are promoting this year in conjunction with the Midland railway company a coal line, which this proposed line crosses, and it will tap the same coal-field, and instead of this coal going by our line to Retford it will go by the new line. Further, as we allege, they must take the same lands at the point of intersection between their line and ours. Thirdly, the promoters take power to agree with the Great Northern company to work the new line, the effect of which may be to turn it into a Great Northern line and so enable the Great Northern hereafter to come direct into Rotherham, and so take away all the traffic of our line between Rotherham and Retford.

Balfour Browne, Q.C. (for promoters): The petitioners are not entitled to be heard against the power given to us in the bill to agree with the Great Northern railway company. The petitioners are promoters with the Midland of a new line, which traverses the country north and south, while ours does it east and west. The promoters of that line are a joint committee of the petitioners and the Midland company, and therefore the petitioners are not entitled to appear here and oppose our line except in conjunction with the Midland, and they do not appear.

Mr. CHANDOS-LEIGH: The Manchester, Sheffield and Lincolnshire company opposed the *Rotherham and Bantry Bill* by themselves.

Balfour Browne: Yes, because in that case junctions were made with the petitioners' railway, but that is not so here. The petition does not allege where the competition arises, or the points between which it will be. We do not deny that they are entitled to a limited *locus standi* in respect to our crossing their line. The case of the *Whitehaven, Cleator and Egremont Railway Bill*, 1877 (2 Clifford and Rickards, 65), decides that they are only entitled to a limited *locus standi* on that point. We say our own line will develop a totally different district to theirs.

Mr. CHANDOS-LEIGH: In which paragraph of your petition do you allege competition between Rotherham and Retford?

Worsley-Taylor: That is covered by the words at the end of paragraph 5 that they will compete with us "for the traffic to and from the works which are now accommodated by the petitioners' railways," that is to say, works in Rotherham, the traffic of which we take by our railway to Retford.

The CHAIRMAN: It is mentioned in rather a cursory way.

Worsley-Taylor: We are bound by the petition and notices of objection. If the promoters intended to take the point that we had not alleged specific termini they ought to have done so in their notices of objection.

Balfour Browne: Merely because we happen to have a station in Rotherham does not give a *locus standi* to everybody who has a station in Rotherham. I say there are no works that would be served by this line that would be served by the petitioners' line. The petitioners say that works on their line and served by them will be accommodated by this new line. No termini are mentioned, the competition is alleged in an exceedingly vague way, and we were not bound to traverse things not mentioned. We submit that there is no competition shown on the petition.

The CHAIRMAN: The *Locus Standi* is *Disallowed*, except as regards the crossing of and interference with land also proposed to be taken under the petitioners' bill of this Session, within the meaning of S. O. 133.

Agents for Petitioners, *Wyatt & Co.*

Agents for Bill, *Walker Webb & Co.*

SHEFFIELD AND MIDLAND RAILWAY COMPANIES COMMITTEE BILL.

Petition of (1) THE SHEFFIELD AND SOUTH YORKSHIRE NAVIGATION COMPANY.

6th March, 1891.—(Before Mr. PARKER, M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. COMPTON, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Railway Company Scheduling Land part of Navigation Undertaking—Compulsory Powers of Purchase of Navigation by Petitioners under existing Act—Claims to be heard as Landowners—Notice to Treat—Lands Clauses Consolidation Act, 1845, sect. 16, how far applicable.

The bill authorised the construction of certain railways, and for that purpose the taking of land belonging to the river Dun navigation. The petitioners had obtained under the Sheffield and South Yorkshire Navigation Act, 1889, powers of purchasing by agreement or compulsorily, upon terms to be settled by arbitration, the naviga-

tions belonging to the Manchester, Sheffield and Lincolnshire railway company, including the river Dun navigation, and the same Act conferred upon them powers for deepening and widening (among others) the river Dun navigation. The petitioners complained that the taking of land along that navigation, as authorised by the bill, would restrict them in widening and improving it under their Act; and they claimed that, having given the Sheffield company notice of their intention to purchase the navigation, they were in the position of landowners with reference to it. Counsel for the promoters relied upon certain provisions of the Sheffield and South Yorkshire Navigation Act, 1889 (one of which provided that the compulsory taking of the navigations belonging to the Sheffield company should "be deemed a compulsory taking, under the terms and conditions of the Lands Clauses Consolidation Act, 1845," which made the raising of the whole of a company's capital a condition precedent to the exercise of compulsory powers of purchase), as differentiating the petitioners' case from that of an ordinary landowner who had received notice to treat:

Held, however, that the *locus standi* of the petitioners must be allowed.

The *locus standi* of the petitioners (1) was objected to on the following grounds: (1) the petitioners do not allege in their petition, nor is it a fact, that any lands, houses or other property belonging to the petitioners will be taken or interfered with under the powers of the bill. The promoters of the bill are, and the petitioners are not, the owners of the navigation of the river Dun and the lands forming part of the undertaking; (2) the petitioners are not entitled to be heard upon any allegations of injury to or interference with the said navigation and lands, the rights and interests respecting which are vested in and represented by the promoters; (3) the petitioners do not allege any ground in their petition, nor have they any interest which entitles them to be heard on their petition against any of the provisions of the bill consistently with the ordinary rules and practice of the House of Commons.

Coates, parliamentary agent (for petitioners): The petitioners were incorporated by the Sheffield and South Yorkshire Navigation Act, 1889, for the object of acquiring from the Manchester, Sheffield and Lincolnshire railway company the canal undertakings which they possessed, especially the river Dun navigation, and under that Act we obtained compulsory powers to take these canals. The company was formed, and we gave notice to treat under the Act, thus placing ourselves in equity in the possession of owners, and I submit that we have a sufficient interest in this undertaking to give us a *locus standi* to ask for protection against works authorised by this bill which will constrict the navigation and entirely prevent us from exercising one of the most important powers of our Act, namely, the improvement of the navigation by both deepening and widening. The promoters have not the same interest in protecting the interests of the navigation as we have, Parliament having given us express powers to obtain possession compulsorily of this navigation.

[*Balfour Browne*, Q.C. (for petitioners) referred to the case of the *London and Eastbourne Railway Bill*, 1883, on the *Petition of the Oxted and Groombridge Railway Company* (3 Clifford and Rickards, 301), and Mr. BONHAM-CARTER referred also to the case of the *London and South-Western Railway Bill*, 1884, *ib.*, 424.]

Worsley-Taylor, Q.C. (for promoters): The petitioners only claim a *locus standi* against that part of the bill which would authorise the crossing of the river Dun navigation. The compulsory powers that they have are not only the powers of the Lands Clauses Consolidated Act, 1845. Sect. 25 of the Sheffield and South Yorkshire Navigation Act, 1889, provides that, failing agreement with the Sheffield company, the Navigation company shall give notice within two years of the passing of the Act of 1889, to purchase compulsorily the existing navigations, and sub-sect. 2 of that section provides: (2) "In case the notice under this section is not given, then all the powers in this Act contained for the compulsory taking by the company of the existing navigations shall absolutely cease and determine, and in the meantime and until the completion of the said purchase as aforesaid it shall not be lawful without the consent of the Sheffield company signified under their common seal for the company, notwithstanding anything in this Act contained to enter upon, take, use or interfere with any of the lands, works or property of the Sheffield company." Therefore, till the completion of the purchase the land remains ours to deal with as we like. Sub-

sect. 4 of the same section says: "The sale and purchase of the existing navigation by the Sheffield company (if otherwise than by agreement) shall be deemed a compulsory taking under the terms and conditions of the Lands Clauses Consolidation Act, 1845." The Lands Clauses Act says before you can issue and serve your notice you must have subscribed the whole of your capital. I submit that that clause enabling them to give us notice was really for our protection, and was inserted in order that we might have some security that the thing would be gone on with, and as a condition precedent to the exercise of any of their powers of purchase, they were, under sect. 26 of the same Act, to deposit £20,000 with the Sheffield banking company to the credit of themselves and ourselves. Subject to that extra condition, the powers, which would be vested in them upon the service of the notice upon us, under sub-sect. 4 of sect. 25 of their Act, only come into effect on the conditions prescribed by the Lands Clauses Act. I submit they have not given notice within the meaning of that section, and they cannot have done it because they have not raised their capital as required by the Lands Clauses Consolidation Act, and, therefore, they have not given notice to treat within the meaning of the Act.

The CHAIRMAN: The *Locus Standi* is Allowed.
Agents for Petitioners (1), Dyson & Co.

Petition of (2) THE GREAT NORTHERN RAILWAY COMPANY.

Railways—Competition, Sufficiency of Allegations of Petition—Practice—Alleged Improvement of existing Competition—Competition by Circuitous Route possible, but not effective.

The bill authorised the Sheffield and Midland railway companies committee to construct certain railways, forming junctions with the railways of each of the two constituent companies, between Worksop and Doncaster, which would, the petitioners alleged, compete with their main line between Retford and Doncaster, and also serve the South Yorkshire coal-field already served by the petitioners. Counsel for the petitioners laid special stress upon the competition that would be created by the introduction into this district of the Midland railway company, but on behalf of the promoters an objection

was taken that, beyond alleging that the Midland company were jointly promoting the bill, the petition contained no specific allegation of competition by that company:

Held, however, that this competition must be inferred from the facts disclosed by the bill and the petition and reference to the map of the district.

It was further contended on behalf of the promoters that the bill would only improve an existing competition, but their counsel declined to say that the existing competition was effective, or that traffic was at present actually sent by the existing route under the control of the promoters:

Held, that under these circumstances there could not be said to be existing competition, and that the *locus standi* of the petitioners must be allowed.

The *locus standi* of the petitioners (2) was objected to on the following grounds: (1) the petitioners do not allege in their petition nor is it the fact that any lands, houses, or other property belonging to the petitioners will be taken or interfered with under the powers of the bill; (2) the railways proposed by the bill would not enable the promoters to compete with or divert traffic from the petitioners' railway to a greater extent than they are able to do at present; (3) no new competition will be created between the promoters and the petitioners, and if any diversion of traffic can be shown as likely to arise it will not be of such a nature or to such an extent as to give the petitioners a right to be heard on their petition; (4) the Manchester, Sheffield and Lincolnshire railway company, who are joint promoters of the bill, acquired the undertaking of the South Yorkshire railway and river Dun company which accommodates the South Yorkshire coal-field some years after the date of the agreement referred to in paragraph 5 of the petition, and that agreement could not in any way affect the traffic arising from the South Yorkshire coal-field, nor will the making of the proposed railways divert any traffic provided for by that agreement; (5) the district through which the railways proposed to be authorised by the bill will pass, although part of the South Yorkshire coal-field, is not accommodated by any railway belonging to the petitioners, and they have no right to be heard against the bill on the ground of competition; (6) the petitioners do not allege any ground in their petition, nor have they any interest,

which entitles them to be heard on their petition against any of the provisions of the bill consistently with the ordinary rules and practice of the House of Commons.

Pope, Q.C. (for petitioners): This is a bill promoted by the joint committee of the Sheffield and Midland railway companies in the construction of a line practically between Worksop and Doncaster. The petitioners' main line runs from Doncaster to Retford, and Retford is mentioned in the petition, because it is the key to the whole of the traffic beyond, and anything that diverts traffic from the line between Doncaster and Retford diverts it beyond Retford. If this line were sanctioned it would give the Midland, for the first time, an independent access to Doncaster, and will introduce a new competition for traffic for Doncaster and places beyond Doncaster, going to the south. We say also that there is an agreement between the Sheffield company and ourselves which should in good faith prevent them from diverting any traffic from our main route at Retford, but this line will give them a new interest in combination with the Midland to divert traffic from Retford and hand it over to the Midland company for conveyance to the south, or convey it themselves to the various points of destination. The Sheffield company is also promoting a new line to London this year, and this scheme in combination with that would enable the Sheffield company to divert the whole of this traffic on its own lines to the south. With regard to competition by the introduction of the Midland company, our petition alleges as follows:—(Paragraph 3.) "The bill is promoted by the Sheffield and Midland railway companies committee, which is a joint committee, composed of members of the Manchester, Sheffield and Lincolnshire and Midland railway companies, and incorporated by the Manchester, Sheffield and Lincolnshire Railway (Additional Powers) Act, 1872." (4.) "By the bill the committee seek power to make five short lines of railway in the South Yorkshire coal-field:—Railway (No. 1) is to commence by a junction with the Midland railway, at Worksop, and to join the Manchester, Sheffield and Lincolnshire railway, a few miles west of Doncaster; and Railways (No. 2), (No. 3), (No. 4), and (No. 5) are short branches to connect the Railway (No. 1) with the Manchester, Sheffield and Lincolnshire railway between Retford and Sheffield, and with another portion of the Midland railway from Chesterfield to Pontefract." (5.) "The effect of these railways will be to establish a new railway nearly parallel with your petitioners' railway between Retford and Doncaster, which will create competition

with and deprive your petitioners of traffic hitherto carried between those points by the Great Northern route, under an agreement made in 1860 between the Great Northern and the Manchester, Sheffield and Lincolnshire companies, and your petitioners ask that a clause similar to sect. 8 inserted in the Great Northern Railway (Doncaster to Gainsborough) Act, 1864, for the extension of the Great Northern railway from Doncaster to Gainsborough, providing for compensation to the Manchester, Sheffield and Lincolnshire railway company for any diversion of traffic and for any damage or loss consequent on the construction, working and competition of the said railway, may be inserted in the bill for the protection of your petitioners." (6.) "The railway will pass through a district known as part of the South Yorkshire coal-field, and your petitioners are large carriers of coal to London from the South Yorkshire coal-field, of which the said district forms a part. Your petitioners have further running powers secured to them by Parliament over the Manchester, Sheffield and Lincolnshire railway from Retford to Sheffield, by means of which your petitioners could readily pass to and from the proposed line." I admit that the grounds of competition are not very fully and explicitly disclosed on the face of the petition, yet having regard to the district served by the proposed railway, and the powers of agreement taken by the bill, viz., joint ownership with the Midland company, which would enable the Midland company to acquire a direct route between Doncaster and London which they have not now, I submit that sufficient grounds of competition have been disclosed to show that, on the face of the map and in the facts disclosed by the bill and the petition, there is introduction into the district of a new competition for traffic to the south, and that therefore a competition will be created which gives us a right to a *locus standi*. It is not the practice of this Court to require too strict and accurate a description by words of the competition which is feared, if that can be inferred from the bill and from the petition.

The CHAIRMAN: It must, at all events, be sufficient to give notice to the other side that that is the point which they have to answer.

Pope: Yes; that was the question raised in the *Bedford and Peterborough Railway Bill, 1886* (Rickards & Michael, 87).

Worsley-Taylor, Q.C. (for promoters): According to the practice of this Court the petitioners must be limited to the matters alleged in the petition. The real question arises in paragraph 5, where they say: "The effect of

the proposed railways will be to establish a new railway nearly parallel with your petitioners' railway between Retford and Doncaster which will create competition with and deprive your petitioners of traffic hitherto carried between those points by the Great Northern." The competition with the Midland is only hinted at in the vaguest possible manner. It can only be implied from the statement that the Midland are to be part owners in this line, and that the effect of the construction of this line will be to compete with them. In the *Bedford and Peterborough* case, where the allegation was held to be sufficient, certain termini were alleged, one being specific and the other being general. In the *Rotherham, Blyth and Sutton Railway Bill*, 1891, on the petition of the *Manchester, Sheffield and Lincolnshire Railway* (*supra*, p. 152) the Court refused a *locus standi*, because the petition did not contain a sufficiently specific allegation of the competition feared, and I ask you in this case to follow that decision. The petitioners here allege competition between two points, Doncaster and Retford, and I submit that they are not entitled to go into anything else but that competition. There is no allegation of Midland competition.

Pope: We could not before the Committee go beyond the allegations in our petition, but we should ask the Committee to construe the allegations liberally.

The CHAIRMAN: Does not the petition taken altogether amount to this: Here is coal in this coal-field destined for London; do not give these companies the monopoly, as we are in competition with them for that?

Worsley-Taylor: The question arises as to whether there is such new competition between Retford and Doncaster as to entitle the petitioners to a *locus standi*. The proposed line is about 20 miles more in length than the petitioners' existing one, and besides this we have already got our route by which we can, if we like, carry traffic, by a roundabout route, from Retford to Doncaster, and therefore there is existing competition, and the proposed line would only improve the competition. As a matter of fact, the Midland are now at Doncaster, not with a line of their own it is true, but they have running powers over the Sheffield railway. We can carry on this competition now separately or jointly.

Sir GEORGE RUSSELL: Do you mean to say that there is practical competition at present? Can you tell us how many passengers and how many tons of goods are carried by the roundabout route you referred to?

Worsley-Taylor: I cannot answer that.

The CHAIRMAN: As a matter of fact, you are not prepared to say that there is any traffic at present carried by the existing route to which you referred. I do not think you can say there is an improvement of competition when, as a fact, there is none.

Worsley-Taylor: I say there is a possibility, by an existing route, of carrying traffic now, and that that possibility would only be improved.

Sir GEORGE RUSSELL: The map, with the application of common sense, is in my judgment adequate.

Mr. CHANDOS-LEIGH: I took no part in the *Rotherham, Blyth and Sutton* case, and I would rather not take any part in this.

The CHAIRMAN: The *Locus Standi* is Allowed.

Agents for Petitioners (2), *Dyson & Co.*

Agents for Bill, *Wyllatt & Co.*

SOUTH-EASTERN RAILWAY BILL.

Petition of THE LONDON, CHATHAM AND DOVER RAILWAY COMPANY.

2nd March, 1891.—(*Before Mr. PARKER, M.P., Chairman; Mr. SHREWS WILL, Q.C., M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Competing Railway Companies—Power to One Company to Subscribe to Pier, &c., Undertakings—Alleged Violation of Agreement—Competition, Improvement of Existing.

Clause 25 of the bill empowered the promoters to subscribe to and guarantee interest on capital of any pier undertaking at any place on the coast of Kent served by their railway. The petitioners were competitors with the promoters for traffic throughout the whole of Kent, and more especially for continental traffic from various ports in Kent, and as to this traffic there was an existing agreement (known as the "continental agreement") between the two companies, which the petitioners alleged might be affected if the powers conferred upon the promoters by clause 25 of the bill were granted. A *locus standi* was conceded to the petitioners against clause 28 of the bill, which amended the continental agreement, but the petitioners also claimed

to be heard against clause 25 as affecting the arrangement come to under that agreement, and generally on the ground of competition. They more especially relied upon the preponderating influence that a subscription under clause 25 might give to the promoters in the control of Sheerness pier. The promoters replied that as their railway did not actually serve Sheerness it would not fall within the words of clause 25, but, even if it did, they (the promoters) already booked passengers to Sheerness, and that with regard to it and other places on the coast of Kent, clause 25 of the bill would, at the most, improve an existing competition carried on by them with the petitioners:

Held, that except as conceded against clause 28 of the bill, the *locus standi* of the petitioners must be disallowed.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege or show, nor is it the fact, that any property of the petitioners is taken or interfered with under the powers of the bill. Paragraphs 1 to 14 (inclusive) of the petition consist of recitals and allegations bearing upon clause 28 of the bill. The promoters concede the right of the petitioners to be heard against the bill in respect of the said clause; (2) the promoters deny that the petitioners have any interest in the subject-matter of clause 25 of the bill either in virtue of the said continental agreement or otherwise which entitles them to be heard against the bill in respect thereof; (3) except as in hereinbefore conceded the petition does not disclose any ground which according to practice entitles the petitioners to be heard upon their petition against the bill.

Cripps, Q.C. (for petitioners): Our *locus standi* against clause 28 of the bill is conceded, and we therefore only desire in addition to be heard against clause 25, which is as follows: "The company" (*i.e.*, the South-Eastern company) "may, with the authority of three-fourths of the votes of the shareholders present in person or by proxy at a general meeting of the company specially convened for the purpose, from time to time subscribe any sum which they think fit, not exceeding in the whole the sum of £5,000, towards the capital of any undertaking which may be authorised for the purpose of erecting a pier, jetty,

or landing place, at any place on the coast of Kent served by the company's railway, and the company may take and hold shares in the capital of such undertaking in respect of such subscription. Provided that the company shall not dispose of or transfer any of the shares in such undertaking for which they may subscribe. And the company may with the like authority, and in addition to any powers already conferred upon them in that behalf from time to time, guarantee the payment of interest or dividends, or other annual payments on any shares, stock, or loan of such undertaking, not exceeding in the whole £10,000." The peculiarity of this clause, which makes our *locus standi* not obvious, is its generality. We claim a *locus standi* for two reasons, first, because it interferes with the terms of the continental agreement providing for pooling the receipts of the South-Eastern and our own company for traffic between all points between Margate and Hastings and the continent, which comprises a large extent of the Kent coast. There is a provision under which one party or the other may have to pay a larger share of the working expenses. If unnecessary accommodation was provided, increasing the working expenses by the South-Eastern company, that would be in the nature of a tax upon the petitioners.

Mr. SHRESS WILL: It is rather a strong thing to say that by this agreement the two companies have so tied their hands that they could neither of them improve their lines with reference to this continental traffic without the other company opposed them in Parliament.

Cripps: I think we should have a right to a *locus standi* in such a case, looking to the purview of this agreement. The second reason why I submit we are entitled to a *locus standi* against the clause is because the promoters could by these powers compete with us at various points, and more particularly at Sheerness. We have a port at Queenborough and a line to Sheerness. The promoters run to Port Victoria by the Hundred of Hoo railway, and our belief is that they want this clause to get possession of Sheerness pier, and so be able to open competition with us.

The *CHAIRMAN*: I think as the clause is so vague you are entitled to argue any possibility of that kind.

Cripps: At the same time the vagueness and generality of this clause does not alter the substance of the matter. It is the same as regards competition whether the promoters put up a new pier or acquired a pier under this clause,

The CHAIRMAN: Is it admitted that you would have a *locus standi* if the promoters were intending themselves to put up a new pier at Sheerness?

Cripps: I think that would be unquestionable, and not only at Sheerness, but wherever we have a competitive interest with them.

Worsley-Taylor, Q.C. (for promoters): The case of the *South-Eastern Railway Bill*, 1883 (3 Clifford & Rickards, 346), was a precisely similar case, and the *South-Eastern Railway (Various Powers) Bill*, 1882 (*ib.*, 219), was still stronger.

Cripps: In the case of the *South-Eastern Railway Bill*, 1883, the only point raised was the question of continental traffic; the question as to Sheerness and new traffic was not raised. And in the other case cited, what I now argue, was not then argued and the argument turned upon a very different clause to the present.

Mr. SHIRESS WILL: You must show new competition, not an improvement of existing competition. I understand you to say that under this clause they might acquire some pier at Sheerness, and that that would be new competition.

Cripps: Yes; and our case differs from those cited, because under this clause the promoters are empowered to subscribe money, and put the burden of the new capital outlay upon one of the parties to the continental agreement.

Worsley-Taylor: No, there is no power to raise money under this Act. We may apply existing corporate funds to the purposes of the Act, limiting it to £5,000. In the case cited we had got the money in hand, and therefore the power there was wider, and that case governs the present.

Mr. SHIRESS WILL: The petitioners say this clause being vague might enable you to acquire control over Sheerness pier, and that you will by these means get to a place that is now in the hands of the petitioners, and to which you do not now go, and that this is new competition. If it is only improved competition the petitioner would not have any *locus standi*.

Worsley-Taylor: There is no power in the bill for us to get exclusive control of Sheerness pier. The power under the bill is to subscribe to and guarantee interest on capital of any pier undertaking to be established on the coast of Kent served by our railway, but the petitioners say they are in exclusive possession of Sheerness by a line of railway, and therefore it follows that we should not come under this clause at all, because we have no railway to Sheerness, and therefore it is not a place served by our railway. We have got our port at Victoria on the opposite side, and we

book people every day by through tickets to Sheerness; therefore we are now carrying on competition with the petitioners in the only way we could carry it on if we got this power to subscribe, and therefore it could only be an improvement of existing competition.

The CHAIRMAN: The *Locus Standi* is *Disallowed*, except as against clause 28, and so much of the preamble as relates thereto.

Agents for Petitioners, *Martin & Leslie*.

Agents for Bill, *Cooper & Sons*, and *C. E. Mortimer*.

STOURBRIDGE IMPROVEMENT COMMISSIONERS BILL.

Petition of THE STOURBRIDGE GAS COMPANY.

26th February, 1891.—(*Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Practice—Deposit of Notices of Objection to *Locus Standi* after Time—Application to Waive Rule—*"Special Circumstances" Alleged.*

Cripps, parliamentary agent (for petitioners): I object to the notices of objection being entertained by the Referees on the ground that they were not deposited in proper time.

Frere (parliamentary agent): I ask the Court to over-rule the objection. The mistake arose through the death of one of the clerks in the office, whose duty it was to deposit documents, and nobody has been hurt by the notices not being lodged in time.

The CHAIRMAN: Apart from the question of injury, it is desirable to be strict in these matters.

Cripps: If the rule is waived in this case it is equivalent to waiving the rule altogether. If "the special circumstances" under which it is competent for the Court to allow notices to be served after the time for serving them has expired, were applied to cases like the present there would be constant application of this nature.

The CHAIRMAN: The Court sustains the objection.

Locus Standi Allowed accordingly.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Rees & Frere*.

TRAMWAYS PROVISIONAL ORDERS
CONFIRMATION BILL (No.2). [BRISTOL
TRAMWAYS EXTENSION ORDER.]

Petition of THE BRISTOL WATERWORKS COMPANY.

14th July, 1891.—(Before Mr. PARKER, M.P.,
Chairman; Mr. SHIRESS WILL, Q.C., M.P.;
The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr.
BONHAM-CARTER.)

*Construction of Tramways to be worked by Cable
Haulage—Interference with Pipes of Water
Company—Duplication of Mains alleged to be
Necessary—Insertion of Agreed Clause—Tram-
ways Act, 1870.*

The bill confirmed, amongst others, a Provisional Order, authorising the construction of new tramways in extension of existing tramways, both of which were to be worked by means of cables passing over wheels and pulleys contained in a trough sunk in the centre of the road, which necessitated a layer of concrete being laid for the whole width between the rails of the tramways. The petitioners alleged that this would prevent their laying their service pipes to houses under the tramway, and that they would, in consequence, be compelled to lay duplicate mains on each side of the tramways. They claimed to be heard to obtain the insertion in the bill of special clauses for their protection. The promoters contended that the petitioners were protected by clause 9 of the bill and the provisions of the Tramways Act, 1870, but the petitioners asked for the insertion of a clause providing that, if in the opinion of an arbitrator, it became necessary for them to lay duplicate mains, the promoters should bear the expense; while as to their alleged protection under the Tramways Act, 1870, they argued that when the Act was passed, haulage by cables was not contemplated or provided for, and that the provisions of the Act were quite insufficient to meet their legitimate requirements. After discussion, an amendment of clause 9 of the bill, as required by the petitioners, was agreed to, and their petition was withdrawn.

Bidder, Q.C., appeared for the Petitioners; Meysey-Thompson for the Bill so far as it confirmed this Order.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Walter Webb & Co.*

WESTERN VALLEYS (MONMOUTH-
SHIRE) WATER BILL.

Petition of (1) THE MONMOUTHSHIRE COUNTY COUNCIL.

26th February, 1891.—(Before Mr. PARKER, M.P.,
Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.;
and Mr. BONHAM-CARTER.)

The case of these petitioners was part heard when the CHAIRMAN intimated that as it was a matter of considerable importance it would be more satisfactory that it should be considered by a fuller Court, and it was accordingly adjourned.

27th February, 1891.—(Before Mr. COURTNEY, M.P., Chairman of Ways and Means, in the Chair; Mr. PARKER, M.P.; Mr. SHIRESS WILL, Q.C., M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM CARTER.)

Water Bill—General Locus claimed by County Council—S. O. 134A [Local Authorities to have Locus Standi against Water, &c., Bills]—How far County Council are Local Authority under S. O.—Interference with Main Roads by Pipes—Rivers Pollution Prevention Act, 1876, Rights of County Council under—S. O. 184 [Compensation Water]—Local Government Act, 1888, sects. 3, 11, 14, 15.

The bill incorporated a water company with power to construct waterworks and supply certain districts in the county of Monmouth. The County Council of Monmouthshire claimed to be heard against the bill generally as a local authority within the meaning of S. O. 134A, which gave local authorities a *locus standi* against bills relating to the water supply of their districts; and, failing the establishment of their right to be heard generally, they claimed to be heard as to interference with main roads which had been placed under their control by sect. 11 of the Local Government Act, 1888; and as the body appointed by Parliament, under sect. 14 of that Act, to enforce the provisions of the Rivers Pollution Prevention Act, 1876; and to ask for the insertion of a provision as to compensation water under S. O. 184:

Held, that the petitioners were not entitled to be heard as a local authority

within the meaning of S. O. 134A; or as the body appointed to enforce the provisions of the Rivers Pollution Prevention Act, 1876, their powers under that Act being unaffected by the bill; and that their *locus standi* must be confined to questions of interference with main roads under the provisions of the bill relating to the laying of mains, &c.

[Note.—Subsequently to the hearing of this case a new S. O., 134c, was passed, giving County Councils the right to be heard generally on the allegations of their petition that their county might be injuriously affected by the provisions of a bill relating to water supply. The S. O. is as follows: "The council of any administrative county alleging in their petition that such administrative county, or any part thereof, may be injuriously affected by the provisions of any bill relating to the water supply of any town or district, whether situate within or without such county, shall be entitled to be heard against such bill."]'

The *locus standi* of the petitioners (1) was objected to on the following grounds: (1) having regard to the objects of the bill the promoters deny the following allegations in paragraph 2 of the petition, (1) that the petitioners are the local authority for the district of the county of Monmouth, (2) that they are injuriously affected by the bill, and (3) that they are the protectors of the interests of the inhabitants of the said county; (2) the petitioners are under the Local Government Act, 1888, constituted a local authority for certain purposes mentioned in that Act, but such purposes do not include the providing of or any control over a supply of water to the inhabitants; (3) the petitioners are not entitled to be heard to object to water pipes being laid in a main road, because if Parliament should deem it expedient that the inhabitants should have a better supply of water, and pass the bill, the petitioners will have the protection which Parliament has already provided for all road authorities by the Waterworks Clauses Act, 1847; (4) the petitioners have no jurisdiction with respect to any streams or springs other than putting in force the Rivers Pollution Prevention Act, 1876, and that Act does not apply to anything the pro-

motors intend to do or can do under the provisions of the bill; (5) the matters set forth in the petition are not such as according to the principles and practice of Parliament can be raised by the petitioners before the Committee to whom the bill may be referred; (6) the bill contains no provision affecting the petitioners.

MR. PARKER: Having been in the chair on the former hearing, I think it will be convenient if I state how the case stood when we adjourned. This is certainly a case of importance; it is a new case and a case involving the question of the functions of County Councils and their position as regards the right to be heard in opposition to the bills. The arguments for the petitioner were completed, and counsel for the promoters was being heard.

Pembroke Stephens, Q.C. (for petitioners): Perhaps it would save trouble if I briefly recapitulated what my points were.

Balfour Browne, Q.C. (for promoters): Provided you merely recapitulate and do not attempt to reply upon me, I have no objection.

MR. PARKER: With that understanding, I think it will be the most convenient course.

Pembroke Stephens: The bill proposes to constitute a water company, whose limits shall include the Risca district and extend up the river Sirhowy to the Tredegar district, and comprises, amongst others, parts of the three districts of Risca, Newport, and Bedwelly, all in the county of Monmouth. As transferees of the highways by sect. 11 of the Local Government Act, 1888, our *locus standi* as to interference with roads is undoubted, and is not objected to by the promoters. The next point is as regards the functions of the County Council under the Rivers Pollution Prevention Act, 1876, as the authority created by sect. 14 of the Act of 1888 to prevent or deal with the pollution of rivers. The Court must remember that the river Sirhowy flows for many miles through the limits proposed to be created by this bill, and that the waters proposed to be taken by this bill are streams which now flow into the Sirhowy, and it is necessary to consider the effect of that withdrawal upon the river, and also whether the County Council, as the rivers pollution authority, will be in the same position to deal effectually with the pollution of the river when so much of the head waters have been taken away under the bill.

MR. SHIRESS WILL: As regards rivers pollution your power comes in when anybody seeks to pollute the river.

Pembroke Stephens: In connection with this point another arises in that the bill does not provide any compensation water, and S. O. 134

says that water compensation is to be in a continuous flow down the river, and I submit that on both these points we have an undoubted *locus standi*. It is said that these are questions that only affect the local authorities upon the stream, and that you are not to have anybody representing the interests of the inhabitants along the stream as a whole. I submit that there are general interests distinct from particular interests, and that if there are any general interests of the inhabitants of a county as regards a river flowing through it as a whole, as distinct from the particular interests of the people on the banks, then that interest ought to be represented.

MR. SHIRESS WILL: Do you claim to come under S. O. 134?

Pembroke Stephens: Yes; we are the proper constituted body for representing the interests of the inhabitants of the county, and we say we shall be injuriously affected by the provisions of the bill. We are, in fact, affected, and there is nobody else to raise the points in which we are interested. What Parliament said in the Local Government Act, 1888, as to representing the interests of the county, was this: Sect. 15. "The County Council of an administrative county shall have the same powers of opposing bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the county," not the inhabitants of a particular district, but the inhabitants of the county, meaning the district as "whole," "as are conferred on the council of a municipal borough, by the Act of the 35 and 36 Vict., chap. 91," which, among other things, mentions water supply. "And subject as hereinafter provided, the provisions of that Act shall extend to a County Council, as if such council were included in the expression governing body and the administrative county were the district in the said Act mentioned." The county is made for this purpose a district, and we have used the expression district in our petition. If you create a company for the first time, and arm it with statutory powers, you are creating something which will interfere as long as that company lasts, with the free working of the Rivers Pollution Act; and you are obliged to look at this question from a public point of view, and to look at the interests of the inhabitants of the district as a whole, and from that point of view I submit there is an interest affected here, which can only be represented through the County Council, who are, for this purpose, the governing body.

MR. SHIRESS WILL: Sect. 15 is not the source of the duty: it enables them to spend this

money in opposing bills in Parliament, which infringe upon some right or duty of theirs as defined in other parts of the Act.

Pembroke Stephens: I submit that there is not merely a transfer of powers, but a creation of new powers.

MR. PARKER: It seems to me that the creation of the County Councils is analogous to the creation of the Metropolitan board in the case of London.

THE CHAIRMAN: Let me put the case of a rural sanitary authority within the area of whose district a stream arose and went down to the sea, the whole length of the stream being absolutely included within the area of the district of that authority.

Pembroke Stephens: Such a case would be extremely rare, but if the interests of the county were overlooked, and there was any mischief to be guarded against, the County Council should ask for a *locus standi*. What I submit is that I have such an interest in this matter that I am sufficiently within sect. 15, and that sect. 15 was meant for such a case as this.

MR. SHIRESS WILL: The gist of your petition appears to be this, that the promoters are coming to take away the water of a particular district, and that in that district there are many villages and populous places which ought to have the water.

Pembroke Stephens: Whatever is done ought to be done upon a general plan, and we ought to be before the Committee to protect the general interests.

MR. SHIRESS WILL: Where is the interest or duty given to the County Council to look after the water supply of villages and populous places in their district?

Pembroke Stephens: We are put, avowedly and admittedly, in the position of a municipal authority of a town, and it is the duty of a municipal authority in the interest and for the protection of its inhabitants to take steps which shall prevent any withdrawal or limitation of advantages as regards water supply.

THE CHAIRMAN: The municipal authority of a borough is not a body having jurisdiction over a district in which there are subordinate bodies having powers with respect to water.

Pembroke Stephens: We have not merely the same power of procedure with respect to our rights and duties, but we have been called into existence for the promotion or the protection of the interests of the inhabitants of the county. We claim a *locus standi* as to the roads, the rivers pollution, and the general protection of the public.

Mr. CHANDOS-LEIGH : The real question seems to be whether you come under S. O. 134A, as a local authority within a district which is injuriously affected.

[*Balfour Browne*, Q.C., for the promoters, was heard on the previous day, and submitted that the bill interfered with no duty or right in which the County Council were interested, and that County Councils had no duty with regard to water supply under the Act, such duty not being imposed by sect. 3 of the Local Government Act, 1888, or any other section of that Act, and except as the body named in sect. 14 to enforce the Rivers Pollution Prevention Act they had nothing to do with water, and there was nothing in the bill which in any way affected this. In the recent case of the *Nelson Corporation Bill*, 1891 (*supra*, p. 147), Padiham and Burnley local boards appeared on the question of water, and such local and sanitary authorities were the right bodies to be heard and not the County Councils.]

Without calling upon *Balfour Browne* to reply again for the promoters, the Court held that the petitioners were not entitled to be heard under S. O. 134A, or except in respect of main roads.

Agents for Petitioners (1), *Dyson & Co.*

Petition of (2) THE VICAR AND CHURCHWARDENS OF THE PARISH OF MYNYDDISLWYN.

Water Bill—Vicar and Churchwardens of Parish included within Limits of Supply—How far a Local Authority—Claim to represent Inhabitants of District Injuriously Affected—Public Meeting—Authority to Sign Petition on behalf of Inhabitants and Ratepayers—S. O. 134 [Municipal Authorities and Inhabitants of Towns]—S. O. 134A [Local Authorities to have Locus Standi against Water, &c., Bills]—Public Health Act, 1875, s. 52.

A petition was also presented against the bill by the vicar and churchwardens of a parish included within the limits of supply, who claimed to represent the inhabitants and ratepayers of their parish, and to have, to a large extent, the control of the affairs of the parish. On this ground they claimed to be heard under S. O. 134A. The petitioners also claimed to be heard to represent the inhabitants of a district alleged to be injuriously affected by the

bill under S. O. 134, the petition containing an allegation that a public meeting of ratepayers had been held, at which it was resolved to present a petition against the bill, which the petitioners had been authorised to sign on behalf of the ratepayers of the parish :

Held, that under these circumstances the petitioners were entitled to be heard under S. O. 134 as representing the inhabitants of their parish.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege that the bill contains a provision for taking or using any lands, buildings, or other property belonging to, or occupied by, the petitioners; (2) it is not the fact (as alleged in paragraph 7 of the petition) that the petitioners control or regulate the affairs of the parish of Mynyddislwyn to any extent as regards the supply of water or other sanitary matters, nor is it the fact that the petitioners represent the owners, ratepayers, and inhabitants of that parish, and the promoters deny that the petitioners' property, rights and interests, or the said parish and inhabitants thereof, will, or can be, injuriously affected by the bill; (3) the promoters also deny that the petitioners (as alleged in paragraph 8) are the local authority within the meaning of S. O. 134A or that their parish or district will be injuriously affected by the provisions in the bill; (4) it is alleged (paragraph 12) that the said parish forms part of the rural sanitary district of Newport, that is to say, the parish is included in the Newport union, the guardians of the poor of which, and not the petitioners, are the rural sanitary and local authority for the district of the said union pursuant to the Public Health Act, 1875; (5) it is further alleged (in paragraph 12) that the local affairs of the said parish are managed by a committee, but such committee does not complain, and the petition does not state that the petitioners claim or have any authority to represent that committee; (6) the promoters admit that for certain purposes (not including the supply of water or other sanitary purpose) the petitioners may claim to represent the vestry of the said parish, that is, the inhabitant householders, who are a distinct class and are not necessarily ratepayers. If the ratepayers desired to oppose the bill they could easily have signed the petition, but there is no power in the bill to impose or levy any rate or tax, and if people do not require the promoters

to supply them with water they will have no water rent to pay, so that ratepayers are not in any way affected by the bill otherwise than by having the option of taking and paying for a supply of good water; (7) the allegation (in paragraph 13) that waterworks have been constructed by the sanitary authority in the Ebbw Valley portion of the said parish (not within the limits of the bill) is a fair admission of the fact that such authority, and not the petitioners, are the proper parties to see that a supply of water is provided for the inhabitants; (8) the bill contains no provision affecting the petitioners; (9) the petition does not show that the petitioners have any such interest in the objects and provisions of the bill as entitles them to be heard against the same.

Ram (for petitioners): We ask for a *locus standi* on two grounds; first, as the local authority under S. O. 134A whose district will be injuriously affected by the bill. The roads are to be opened up by the promoters for the purpose of laying mains, and as these roads belong to the parish we are in this way directly affected.

Mr. CHANDOS-LEIGH: Where do you say anything about roads in the petition?

Ram: We do not say that they will be interfered with in so many words, but we allege injury to our district generally. The second ground on which we ask for a *locus standi* is as representing the inhabitants of a parish, the greater part of which is within the water limits of supply in the bill. If this bill passes, by sect. 52 of the Public Health Act, the local authority will be prohibited from getting a proper water supply hereafter if this supply is not enough.

Mr. CHANDOS-LEIGH: We shall insist on a proviso being inserted to provide for that contingency.

Ram: Under the Public Health Act, if this water is provided by this company, then the sanitary authority can call upon the inhabitants to take the water and pay whatever rates the company is empowered to charge. The effect therefore of this bill and the Public Health Act will be to impose upon the inhabitants this obligation and the payment of a water rate.

Mr. CHANDOS-LEIGH: Is this purely the petition of the vicar and churchwardens?

Ram: No; it was signed by them at the request of the ratepayers at a duly convened meeting to consider this bill, and the notices of objection do not raise any point as to this.

Mr. SHIRESS WILL: Can you refer to any cases where this Court has granted a *locus standi* under similar circumstances?

Ram: The Caterham Spring Water Bill, 1885 (Rickards & Michael, 12).

Mr. CHANDOS-LEIGH: There is also the case of the Basingstoke Gas Bill, 1887 (Rickards and Michael, 137).

Balfour Browne, Q.C. (for promoters): The vicar and churchwardens have nothing to do with water supply. This was merely a vestry meeting, and the petition does not purport to come from ratepayers, though there may have been some present at the meeting. The circumstances in the Gas and Water Orders Confirmation (Thirsk District) Water Order Bill, 1879 (2 Clifford & Rickards, 161) were the same as these, and the *locus standi* was refused.

Mr. CHANDOS-LEIGH: When on the face of the petition we see that a resolution to oppose the bill was passed at the public meeting at which inhabitants and ratepayers were present, and the vicar and churchwardens in accordance with a resolution passed at that meeting, sign on behalf of those who were present, are we to say that they are not entitled to be heard as representing the inhabitants of a district injuriously affected?

Balfour Browne: I cite also the case of the Castlewood and Whitwood Gas Bill, 1878 (2 Clifford & Rickards, 78).

Mr. SHIRESS WILL: The petition might have been signed by anybody if it was signed on behalf of the public meeting.

Balfour Browne: Yes, if it was a public meeting of the inhabitants called for the express purpose.

The CHAIRMAN: The *Locus Standi* is Allowed.

Agents for Petitioners (2), *Sharpe & Co.*

Petition of (3) THE BLACKWOOD GAS AND WATER COMPANY, LIMITED.

Bill to Incorporate Water Company with Parliamentary Powers—Petition of Non-Statutory Company—Inclusion within Proposed limits of Supply—Competition.

The petitioners were a company incorporated under the Companies Acts, 1862 to 1886, for the purpose of supplying the towns of Blackwood and Argoed with water. Both these towns were included within the promoters' limits of supply as defined by the bill, and the petitioners claimed to be heard, on the ground of competition, to ask that these towns

might be excluded from the proposed limits of supply. Their *locus standi* was objected to on the ground that they had no parliamentary powers, and could not break up streets to lay mains except by agreement with the road authorities, and had no powers to levy water rates, and no defined district of supply:

Held, that, on these grounds, they were not entitled to a *locus standi* against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petitioners allege that they were incorporated as a limited company so recently as 1890 for the purpose, among other things, of supplying Blackwood and Argoed with water, and for carrying on the business of a waterworks company; (2) the petition does not state that the petitioners have, and they in fact have not any authority either by Act of Parliament or Provisional Order to construct works, lay pipes, or make charges for the supply of water in any defined district or limits; (3) it is not alleged that the petitioners have yet constructed any works, laid any pipes, or are supplying, or in a position to supply, water; nor can they purchase land, construct works, or lay pipes otherwise than by agreement and on sufferance, and any ratepayer or member of the public could restrain and indict them from interfering with any public road; (4) it is admitted that Blackwood and Argoed are within the limits of supply proposed by the bill, but the petitioners have no property or rights which will, or can be, injuriously affected by the bill; (5) the petitioners abstain from alleging

in paragraph 7 that they are supplying water, but ask that provision should be made for excluding the towns and districts appropriated by them; (6) the bill contains no provision affecting the petitioners; (7) the petition does not show that the petitioners have any such interest in the objects and provisions of the bill, as entitle them to be heard against the same.

Ram (for petitioner): We are a limited company, incorporated in 1890 for the purpose among other things of supplying water to Blackwood and Argoed, which are within the promoters' limits of supply as proposed by the bill, and though we have not as yet begun our works we claim a *locus standi* on the ground of competition. This bill seriously affects our property and interests, and will prevent us from carrying on the water undertaking for which we were incorporated, and we ask that Blackwood and Argoed should be excluded from the proposed limits of supply.

Mr. CHANDOS-LEIGH: In the *Tyldesley with Shakesley Local Board Gas Bill*, 1865, referred to in *Smethurst*, 3rd Ed., 68, the Atherton gas company who had no parliamentary right to break up streets had entered into arrangements to supply the Atherton local board with gas, and their *locus standi* was refused. Is not that exactly this case?

Ram: We might enter into arrangements to supply water without breaking up the streets.

Balfour Browne, Q.C., appeared for the promoters, but was not called upon.

The CHAIRMAN: The *Locus Standi* is Disallowed.

Agents for Petitioner (4), *Sharpe & Co.*

Agents for Bill, *W. & W. M. Bell.*

INDEX OF BILLS

OF THE SESSIONS 1890-91 REPORTED IN THIS PART.

	PAGE
AIRE AND CALDER AND RIVER DUN NAVIGATIONS JUNCTION CANAL BILL, 1891	77
ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY BILL, 1890	1
AYR HARBOUR BILL, 1890	5
BEVERLEY AND EAST RIDING RAILWAY BILL, 1890	10
BILSTON COMMISSIONERS WATER BILL, 1890	11
BRITON MEDICAL AND GENERAL LIFE ASSOCIATION BILL, 1890	11
BURRY PORT AND GWENDREATH VALLEY RAILWAY BILL, 1891	81
BUTE DOCKS (CARDIFF) BILL, 1890	12
CALEDONIAN RAILWAY (ADDITIONAL POWERS) BILL, 1891	87
CENTRAL LONDON RAILWAY BILL, 1891	90
CORK AND FERMOY AND WATERFORD AND WEXFORD RAILWAY BILL, 1890	19
CROYDON AND CRYSTAL PALACE RAILWAY BILL, 1890	25
EDINBURGH MUNICIPAL AND POLICE BILL, 1891	91
ELECTRIC LIGHTING PROVISIONAL ORDERS (No. 11) BILL (CHATHAM, ROCHESTER AND DISTRICT ELECTRIC LIGHTING ORDER), 1890	26
FOLKESTONE PIER AND LIFT BILL, 1890	28
FOLKESTONE, SANDGATE AND HYTHE TRAMWAYS BILL, 1891	102
FORFAR AND BRECHIN RAILWAY BILL, 1891	104
GARVE AND ULLAPOOL RAILWAY BILL, 1890	30
GLASGOW CORPORATION BILL, 1890	31
GLASGOW AND SOUTH-WESTERN RAILWAY (STEAM VESSELS) BILL, 1891	111
GLASGOW SOUTH SUBURBAN RAILWAY BILL, 1891	117
GREAT NORTH OF SCOTLAND RAILWAY BILL, 1890	34
GREAT WESTERN RAILWAY BILL, 1891	117
HANDSWORTH (STAFFORD) RECTORY BILL, 1891	123
HIGHLAND RAILWAY (NEW LINES) BILL, 1890	35

	PAGE
KEIGHLEY CORPORATION BILL, 1891	125
LANARKSHIRE AND DUMBARTONSHIRE RAILWAY BILL, 1890	36
LANCASHIRE, DERBYSHIRE AND EAST COAST RAILWAY BILL, 1891	127
LOCAL GOVERNMENT PROVISIONAL ORDER (FOR THE FORMATION OF THE EDMONTON, ENFIELD, SOUTH HORNSEY AND TOTTENHAM JOINT HOSPITAL DISTRICT) CONFIRMATION BILL, 1891	127
LONDON AND SOUTH-WESTERN RAILWAY BILL, 1890	36
LONDON, BRIGHTON AND SOUTH COAST RAILWAY (VARIOUS POWERS) BILL, 1890	39
LONDON COUNTY COUNCIL GENERAL POWERS BILL, 1891	130
MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RAILWAY (EXTENSION TO LONDON) BILL, 1891	130
MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RAILWAY (VARIOUS POWERS) BILL, 1891 ..	140
METROPOLITAN RAILWAY BILL, 1890	40
NELSON CORPORATION BILL, 1891	144
NORTH BRITISH AND GLASGOW AND SOUTH-WESTERN RAILWAY COMPANIES BILL, 1890 ..	50
NORTH BRITISH RAILWAY BILL, 1891	151
PARTICK, HILLHEAD AND MARYHILL GAS AND ELECTRICITY BILL, 1890	53
RIBBLE NAVIGATION BILL, 1890	56
RICHMOND FOOTBRIDGE (LOCK, &c.) BILL, 1890	60
RHYMNEY RAILWAY BILL, 1890	64
ROTHERHAM, BLYTHE AND SUTTON RAILWAY BILL, 1891	152
SHEFFIELD AND MIDLAND RAILWAY COMPANIES COMMITTEE BILL, 1891	153
SOUTH-EASTERN RAILWAY BILL, 1890	68
SOUTH-EASTERN RAILWAY BILL, 1891	157
SOUTH YORKSHIRE JUNCTION RAILWAY BILL, 1890	69
STOURERIDGE IMPROVEMENT COMMISSIONERS BILL, 1891	159
TOTTENHAM AND FOREST GATE JUNCTION RAILWAY BILL, 1890	71
TRAMWAYS PROVISIONAL ORDERS CONFIRMATION BILL (No. 2) (BRISTOL TRAMWAYS EXTENSION ORDER), 1891	160
WESTERN VALLEYS (MONMOUTHSHIRE) WATER BILL, 1891	160
WORCESTER AND BROOM RAILWAY (EXTENSION OF TIME) BILL, 1890	75

INDEX TO SUBJECTS.

TO CASES CONTAINED IN PART I., VOL. I.)

*** Where a Standing Order is Referred to in the Index, the numbering is that of the Standing Orders for 1892.

ABANDONMENT (*See* RAILWAY (1)).

ABSTRACTION (*See* GAS, RAILWAY (4), TRAFFIC, WATER).

ACCESS (*See also* OBSTRUCTION),

to harbour interfered with by railway bridge, 20

to ferry interfered with by level crossing, 23

direct — to town by construction of railway opposed by owners of toll-bridge, 36

to building estate interfered with by closing of footpath, 39

interference with — by construction of line in front of petitioners' property, 136

to church interfered with by railway, 139

loss of — occasioned by closing of level crossing, 151

ACTS, PUBLIC (*CITED*),

Harbours, Docks, and Piers Clauses Act, 1847, 58

Poor Law (Scotland) Act, 1845, s. 17, 91

Public Health Act, 1875, s. 52, 125; ss. 131, 279; 308, 127

Railways Clauses Consolidation Act, 1845, s. 16, 46

Lands Clauses Consolidation Act, 1845, s. 16, 153; s. 40, 40; s. 128, 43

Tramways Act, 1870; 160

Rivers Pollution Prevention Act, 1876, 160

Local Government Act, 1888, ss. 3, 11, 14, 15, 160

Public Health Act, 1875, s. 52, 163

ADVOWSON,

transfer of — and re-endowment of rectory opposed by inhabitants and churchwardens of ecclesiastical district formed from parish, 123

AGREEMENT (*See also* RAILWAY (3)),

how far intention of, considered, 1

alleged fraud in obtaining — to supersede protective clause, 144

of railway company with road authority, not confirmed by bill, 151

alleged violation of — by power in bill to subscribe to pier, 157

ALLEGATION (*See* PETITION, PRACTICE).

AMALGAMATION (*See* RAILWAY (2)).

AMENITY (*See also* OWNERS),

loss of — by construction of line in residential neighbourhood and erection of terminal station, 134, 136

APPEAL

to Board of Trade, as to bye-laws dealing with navigation, provided for in bill, 77

APPEARANCE,

not entered for petitioners, on undertaking by promoters not to re-instate clauses, 99

APPROACH (*See* ACCESS).

AREA (*See also* GAS, RATES, WATER),
lessening the — over which taxes can be levied, 91

ASSOCIATION (*See* LANDOWNER, TRADE).

AUTHORITY (*See* HARBOUR BOARD, LOCAL BOARD, SANITARY AUTHORITY).

BARGE OWNERS,
apprehending introduction of large vessels on canal, 77

BILL (*See* PRACTICE).

BOARD OF TRADE,
control of works authorised by previous Acts, imposed by bill on —, 56
appeal to, as to provisions in bill relating to bye-laws as to navigation, 77

BOARD OF WORKS (*See* LOCAL BOARD).

BONDS,
petitioner holder of — and also a creditor, complaining of alteration of
status, 28

BOROUGH (*See* CORPORATION).

BRANCH (*See* RAILWAY (3)).

BREACH OF FAITH (*See also* AGREEMENT, PRACTICE),
alleged by corporation against railway company seeking to abandon
authorised line and to substitute another, 104

BRIDGE,
interference by railway — with access to harbour, 20
abstraction of traffic by railway — from road bridge, 23
owners of toll — opposing railway giving direct access to town, 36
construction of — and weir with removable sluices opposed by local
authorities, 60

BROOKS (*See* RIVER).

BUILDING ESTATE (*See* ACCESS).

BURGH (*See* CORPORATION).

CANAL,
construction of — forming junction between existing canals, 77

CAPITAL,
proposed repeal of clause as to share — in previous Act, 28

CARRIERS (*See* RAILWAY (3)).

CHURCH,
injury to — by disturbance and vibration owing to propinquity of
railway, 139

CHURCHWARDENS (*See also* VICAR),
and inhabitants of ecclesiastical district formed from parish opposing
transfer of advowson and re-endowment of rectory, 123

CLAUSE (*See* SAVING CLAUSES).

COMMISSIONERS (*See* HARBOUR BOARD, NAVIGATION, ETC.).

COMPANY (*See* GAS, RAILWAY, ETC.).

COMPENSATION,
money payment in lieu of — water, 144

COMPETITION (*See* CORPORATION, DOCK, GAS, RAILWAY (4)).

- CONSERVANCY (*See also* NAVIGATION),
how far representing the interests of riparian proprietors, 60
- CONSTRUCTION (*See* PRACTICE).
- CONSUMERS (*See* GAS, WATER).
- CONTRACT (*See* AGREEMENT).
- CORPORATION
promoting simultaneous bills for electricity and extension of borough,
opposed by company as promoters of bill for electricity in respect of both
bills, on ground of competition, 31
opposing construction of a competing railway on account of injury to
trade interest, 34
of Scotch burghs how far representing traders, also petitioning, 50
distinction between — of English and Scotch burghs, 50
competing with gas company without statutory powers, promoting bill for
conferring statutory powers and prohibiting supply by corporation, 53
promoting bill for additional capital for deep water channel already
authorised, opposed by neighbouring — alleging injury to tidal flow, 56
of Scotch burgh alleging injury to town by conversion of local into through
line, 104
- COUNTY COUNCIL (*See also* LOCAL BOARD),
claiming general *locus* against water bill, how far local authority under
S. O. 134A, 160
rights of — under Rivers Pollution Prevention Act, 1876, 160
- COURT OF CHANCERY,
petitioner having commenced action in — claims right to *locus*, 144
- COURT OF REFEREES (*See* PRACTICE).
- CROSSINGS (*See* LEVEL CROSSING, RAILWAY (3)).
- DESCRIPTION (*See* PETITION, PRACTICE).
- DEVIATION (*See* LIMITS OF).
- DISSENTIENT (*See* SHAREHOLDER).
- DISTINCT INTERESTS (*See also* CORPORATION, OWNERS, REPRESENTATION,
TRADERS),
of traders arising out of agreement with railway company, 50
- DISTRICTS,
allegation that — territorially belonged to petitioners' railway as ground
of competition, 67
meaning of word "district," 72, 134
- DIVERSION (*See* TOLLS, TRAFFIC, ETC.).
- DOCK (*See also* HARBOUR),
and railway company seeking running powers over petitioners' railway, 1
transfer to competing — of powers granted to railway company to
construct railway, 12
injury to competing —, by diversion of traffic, 17
railway company owners of — opposing construction of junction, 81
- ELECTRICITY (*See also* TRAMWAY),
and extension-of-borough bills opposed by promoters of electricity bill on
ground of competition, 31
- EVIDENCE (*See* PETITION, PRACTICE).
- EXEMPTION,
proposed — of public buildings from poor rate opposed by parochial
boards, 91, and by School Board, 96

- EXTENSION** (*See also* GAS, RAILWAY (3)),
 of burgh and electricity bills opposed by promoters of electric bill on ground of competition, 31
 bill for — of authorised line and making of new line, and same land scheduled by promoters and petitioners, claim to be heard against both powers, 120
- EXTENSION OF TIME BILL** (*See also* GAS, HARBOUR, RAILWAY (3), TRAMWAY),
 for construction of railways, but not for compulsory taking of lands, 17
 ——— railway, petitioning railway claiming laws to obtain clause to interpret existing Act, 75
 petitioning company opposing — for railway crossing their land, 117
 for construction of waterworks opposed by local board of neighbouring district, claiming water-shed appropriated by promoters under previous Acts, 125
- FACILITIES** (*See also* RAILWAY (3), TRAFFIC),
 loss of present — to town at present on main line apprehended by corporation of burgh, 104
- FARES**,
 combined railway and sea — provided for in railway bill seeking steam-boat powers, 111
- FERRY**,
 invasion of rights by railway bridge and abstraction of traffic, 23
 interference with access to —, 23
- FOOTPATH** (*See also* ROAD),
 proposal to close — and substitute foot-bridge, opposed by residents, 39
- FREIGHTERS** (*See* TRADERS).
- FRONTAGE**,
 to houses interfered with by proposed railway, 136
- GAS**,
 company without statutory powers, competing with corporation as promoters of bill for electric lighting, and claiming to prohibit corporation from supplying gas within limits of company, opposed by ratepayers and consumers, 53
 rights of individual — consumers to oppose bill, 53
- HARBOUR** (*See also* DOCK),
 bill empowering railway company to subsidise revenues of — opposed by competing harbour, 5
 diversion of traffic to — subsidised by railway, 5
- HARBOUR BOARD**,
 opposition by competing — to proposal of railway company to subsidise harbour revenues, 5
 interests of interference with, unlimited *locus standi* allowed as to, 20
 apprehending diminution of tolls opposing construction of junction, 81
- HAULAGE** (*See* TRAMWAY).
- HIGHWAY** (*See* ROAD).
- HOSPITAL**,
 for infectious diseases, formation of united district for, opposed by sanitary authority of adjoining district alleging injurious affecting, and by owners and occupiers of adjacent property, 127
- HOUSE** (*See also* LANDOWNER),
 demolition of — and diminution of rates during construction of work, 68
- HOUSE OF LORDS** (*See* PRACTICE).

ILLUMINATING POWERS (*See* ELECTRICITY, GAS).

INCUMBENT (*See* CHURCH, VICAR).

INFECTIOUS DISEASES (*See* HOSPITAL).

INHABITANTS (*See also* RATEPAYERS),
 and traders opposing interference with access to harbour, 20
 opposing bill for bridge over navigable river on ground of injury to residential property, 60
 alleging injurious affecting, how far represented by local authorities, 72
 and churchwardens of ecclesiastical district, formed from parish, opposing transfer of advowson and re-endowment of rectory, 123
 opposing construction of terminal station as destroying residential character of district, 134

INJURIOUS AFFECTING (*See also* ACCESS, AMENITY, LAND, LANDOWNER, RAILWAY (3)),
 of landowners' property, by repeal of protective clause in existing Act prohibiting heavy goods traffic, 130
 of district by construction of terminal station, 134

INJURY,
 remoteness of — to owners of toll bridges by diversion of traffic, 36
 special — to traders not adequately represented by corporation, 50
 remoteness of — how far affecting the right to a *locus standi*, 60
quantum of — how far considered, 68
 absence of substantial — to petitioners caused by railway bill, 120
 to church by disturbance and vibration caused by railway, 139

JOINT OWNERS (*See* OWNERS, RAILWAY (3)).

JUNCTION (*See* RAILWAY (5)).

LAND (*See also* LANDOWNER, OWNERS, ETC.),
 interference by formation of junction with — of railway company, 14
 same — scheduled by bills of promoters and petitioners, as ground of *locus* against making of new railway and extension of authorised railway, 120
 same — scheduled under a bill jointly promoted by petitioners and another railway company, claim to general *locus* in respect of, 152

LAND AND WATER CARRIAGE,
 special clauses in bill relating to —, contrary to s. 30; 111

LANDING PLACES (*See* PIER).

LANDOWNER (*See also* OWNERS),
 railway company as — claiming general *locus*, 14
 not having received notice to treat, opposing bill for extension of time for constructing railway and transfer of powers, 17
 adjacent to underground railway, injuriously affected by excavations, 44
 claiming general *locus* on ground that his land is crossed by proposed railway, 67
 petitioners served with notice as — not alleging that their lands were taken by bill, 87
 associations and individual — opposing additional taxation for police and sanitary improvements, 100
 railway company as — claiming general *locus*, and opposing extension of time for railway crossing petitioners' land, 117
 claiming general *locus* against bill proposing to repeal protection clause under existing Act, prohibiting heavy goods traffic, 130
 navigation company as —, opposing bill under which lands of navigation undertaking scheduled, 153

LEGAL REMEDY (*See* PRACTICE).

LEGISLATION,
 complaint against past —, 1; 56, 91
 past —, under what circumstances petitioners allowed to re-open, 102
 —, how far alteration of circumstances entitles petitioners to re-open, 125

LESSEE (*See* OWNERS).

LEVEL CROSSING (*See also* RAILWAY (3)),
stopping up — over railway opposed by owners, &c., 151

LIMIT OF DISTANCE,
where river affected injury not — governs the case, 60

LIMITS OF DEVIATION,
special power necessary to stop up road included in —, 136

LIS PENDENS,
does not give a right to *locus standi*, 144

LOCAL BOARD AND AUTHORITY (*See also* CORPORATION, SANITARY AUTHORITY).

opposing repeal of Act prohibiting goods traffic by underground railway, 40
how far representing inhabitants of district injuriously affected, 72

as mortgagors of district rate as collateral security for harbour revenues, 81
Scotch parochial boards claiming as ratepayers to oppose proposed exemptions from poor rates of public buildings, and to discuss policy of existing exemptions, 91

of neighbouring district, claiming watershed appropriated by promoters under previous Acts, opposing extension of time bill for construction of works, 125

how far County Council are — under S.O. 134A, 160

LOCAL GOVERNMENT (*See* PROVISIONAL ORDER).

LOCKS (*See* WEIRS).

LOCOMOTIVE ENGINE MANUFACTURERS
alleging special injury by bill arising out of the nature of their business, 50

MAINS,
alleged necessity for duplication of — owing to construction of tramway to be worked by cable haulage, 160

MANUFACTURERS (*See* TRADERS).

MECHANICAL POWERS (*See* ENGINES, TRAMWAYS).

MEETING (*See* PUBLIC MEETING).

MERCHANTS (*See* TRADERS).

MILL-OWNERS,
money payments to — in lieu of compensation, water, 144
below point of return of impounded water opposing bill, 147

MORTGAGEES (*See* SHAREHOLDERS).

MUNICIPAL (*See* CORPORATION).

NAVIGATION (*See also* DOCK, HARBOUR BOARD, RIVER),
commissioners opposing railway bridge, 20
obstruction of — on canal and competition by compartment boats, 77
provisions in bill relating to bye-laws as to — providing for appeal to Board of Trade, 77
company as landowners opposing bill where land of navigation undertaking was scheduled, 153

NOTICES (*See* OBJECTIONS, OWNERS, PETITION, PRACTICE).

NUISANCE,
from disturbance to church services caused by railway, 139

OBJECTIONS (*See also* PETITION, PRACTICE),
application for extension of time for giving notice of —, 11
notices of —, how far promoters bound by, 52
notices of — deposited after time, 159

- OBSTRUCTION** (*See also* ACCESS),
competition and — of navigation on canal by compartment boats, 77
- OCCUPIERS** (*See* OWNERS).
- OVERSEERS**,
petition by — against proposed railway in respect of demolition of houses and diminution of rates, 68
- OWNERS, LESSEES AND OCCUPIERS** (*See also* RAILWAY (3)),
of property adjacent to site for hospital, opposing formation of united district for infectious diseases hospital, 127
opposing running powers over railway and repeal of prohibitions as to heavy goods traffic and construction of station, 184
- PARISH** (*See also* VICAR),
inhabitants and churchwardens of ecclesiastical district formed from —, opposing transfer of advowson and re-endowment of rectory, 123
- PARTNERS** (*See* RAILWAY (3)).
- PETITION** (*See also* PETITIONERS, PRACTICE),
notices of objection to *locus standi*, application for extension of time for serving, 11
sufficiency of allegation in — of injury to trade, 34
— allegation of injury in —, of owners, 71
authority to represent inhabitants not alleged in —, 72
absence from — of landowners, of allegation that their lands were taken by bill, 87
withdrawal of signatures from —, 90
joint — of traders and corporation of burgh, opposing withdrawal of railway facilities, 104
- PETITIONERS** (*See also* PETITION, PRACTICE),
promoting bill for electricity claiming a *locus* against bills for electricity and extension of burgh promoted by corporation, on ground of competition, 31
land of — crossed by railway, 67
sufficiency of numbers of — claiming to represent inhabitants, 72
seeking to obtain interpretation clause as to a matter not in bill, 75
claiming under Poor Law (Scotland) Act, 1845, as representatives of rate-payers, 91
right of — to be heard against clauses of bill as amended for Committee, 98
appearance not entered for —, on undertaking by promoters not to reinstate clauses, 99
claiming protective clauses in bill, and power to make railway in default of promoters, 120
status of — not affected by bill for transfer of advowson and re-endowment of rectory, 123
alleging special injury from temporary inconvenience during construction of line, 136
interference with status of — how far entitling to a *locus*, 28, 140
jointly promoting bill with another railway company opposing scheme under which same land is scheduled, 152
- PIER**,
proposed alteration of status of shareholders in — and lift company, 28
power to subscribe to —, alleged violation of agreement by, 157
- PIPES** (*See* GAS, ROAD, WATER).
- POLICE**,
and sanitary provisions, proposed additional taxation for, opposed by associations of landowners and individual owners of property, 100
- POLLUTION** (*See* RIVER, WATER).
- POPULATION**,
growth of, necessitating further water supply to petitioners' district 125

PORT (*See* DOCK, HARBOUR).

"POST CASE,"

discussed, 14, 19, 117.

POWERS (*See also* RAILWAY (6)),

bill for conferring statutory — upon gas company opposed by corporation, 53

PRACTICE (*See also* PETITION),

objection by railway company with running powers over line to admission of another company, 1

notice of objections, application for extension of time for serving, 11

Court unwilling to re-open or decide questions relating to legal rights of petitioners, 11, 12, 136

railway company as landowners claiming general *locus* against omnibus bill, 14

in cases of competition, 25

applicable to bills confirming Provisional Orders, 26

where clause agreed in House of Lords, petition with additional signatures but identical interests, how far entitling to *locus standi*, 39

remedy at law how far affecting right to *locus standi*, 45

re-hearing after motion to the House to allow all petitioners against amalgamation bill to be heard, 52

probability of injury, how far a ground of *locus standi*, 60

petitioners whose bill had been rejected in first House, claiming running powers to be inserted in competing bill in second House, 64

how far necessary for owners to allege that they are within the limits of deviation and to allege specific injury in petition, 71

petitioners against extension of time bill not entitled to re-open question of guarantee, 75

petitioners served with notice as landowners not alleging that their lands were taken under bill, 87

withdrawal of signatures from petition, 90

right of petitioners to be heard against clauses of bill as amended for Committee, 98

appearance not entered by petitioners, on promoters undertaking not to reinstate clauses, 99

how far railway company as landowners entitled under S. O. 133 to a general or limited *locus standi*, 117

where insufficiency of allegations in petition, how far promoters bound to consider deposited plan with petition, 120

landowner claiming general *locus* against repeal of protection clauses in existing Act, 130

special instruction to Committee, how far affecting right to *locus standi*, 130

landowners alleging loss of amenity of property claiming a right to be heard, 134

road within limits of deviation, whether express powers necessary to divert or stop up, 136

temporary inconvenience during construction of line, how far amounting to special grievance, 136

absence of *prima facie* evidence of fraud, where proper remedy was at law, 144

right of petitioners to be heard against bill as deposited, 151

competition, sufficiency of allegation in petition, and on face of map, 155

deposit of notices of objection to *locus standi* after time, 159

authority to sign petition on behalf of inhabitants and ratepayers, 163

PROSPECTIVE BENEFIT,

loss of —, by abandonment of line authorised in previous session, 104

PROTECTIVE CLAUSES (*See* SAVING CLAUSES).

PROVISIONAL ORDER (*See also* PRACTICE),

extending area of supply of electric lighting company, shareholders' petition against, 26

for formation of united district for hospital for infectious diseases, omission of any reference as to site of hospital in, 127

County Council opposing water bill, which proposed to interfere with main roads, 160

PUBLIC MEETING (*See also* PRACTICE, SHAREHOLDERS),
 insignificance of —, how far right of gas consumers to be heard affected
 by, 53
 authority given by —, to vicar and churchwardens to petition on behalf
 of ratepayers and inhabitants, 163

QUANTUM OF INJURY.
 not distance, test of right to *locus*, 60

RAILWAY (*See also* AGREEMENT), (1) ABANDONMENT. (2) AMALGAMATION. (3) COM-
 PANY. (4) COMPETITION. (5) JUNCTION. (6) RUNNING POWERS. (7) STATION.
 (8) WORKING AGREEMENT.

(1) *Abandonment*,

of line and substitution of another opposed by corporation of burgh alleging
 injury to town, 104
 partial — and diversion of authorised line opposed by company under an
 agreement to work same, 108

(2) *Amalgamation*,

alleged virtual — by vesting railways of harbour trustees in railway
 company, 5
 affecting traders by removal of competition, 50
 motion to the House to allow all petitioners to be heard against —, 52

(3) *Company*,

proposing to subsidise harbour revenues opposed by competing harbour, 5
 — transfer of powers to make railway from — to dock company, 12
 petition of — against transfer of powers to dock and railway company, 14
 as landowners, interference with land of — by formation of junctions, 14, 19
 underground — not interfering with surface of street opposed by vestry, 40
 underground — adjacent landowners opposing underpinning clause
 as to, 44
 as owners of portions of railway over which promoters' railway must
 pass, 47
 as joint owners of line with promoters, 49
 crossing land of petitioners, general *locus standi* claimed against, 67
 proposing to pull down houses for widenings, and causing diminution of
 rates, 68
 petition of —, forming link in chain of through communication, 69
 — interested in guarantee to promoters against extension of
 time bill, 75
 as dockowners opposing junction on ground of competition and diversion
 of traffic, 81
 as landowner, how far affected by S. O. 133, 87
 seeking to convert local into through line, opposed by corporation
 of burgh, 104
 seeking steamboat powers, opposed by companies working and owning
 competing line, and also as joint owners of railway with promoters, 111
 as landowners whose land is compulsorily taken claiming general *locus*, 117
 proposing to convert branch goods line into passenger railway, petitioner
 claiming to extend running powers over promoters' railway to this
 branch, 117
 petitioning — opposing extension of time for railway crossing their land, 117
 seeking running powers over railway intersecting petitioners' property,
 asking for practical repeal of protective provisions in existing Act, 130
 construction of line by — in front of petitioners' property, causing
 temporary interference with access, 136
 causing injury to church by disturbance and vibration, 139
 reference to agreement of — with road authority not confirmed by bill, 151
 same land scheduled by — and under bill jointly promoted by petitioners
 and another railway company, 152
 scheduling of land, part of navigation undertaking, opposed by navigation
 company, 153

RATEPAYERS (*See also* CORPORATION, INHABITANTS),
and gas consumers injuriously affected by gas bill removing competition, 53
claim of Scotch parochial board to represent — under Poor Law
(Scotland) Act, 1845, 91

RATES (*See also* EXTENSION, HARBOUR BOARD, RAILWAY (3)),
diminution of —, during construction of proposed works, 68
poor —, proposed exemption of public buildings from, opposed by
parochial boards 91, and by School Board 96
school —, collection of, by parochial boards, 96

RECTORY (*See* ADVOWSON).

REFEREES (*See* PRACTICE).

RE-HEARING (*See* PRACTICE).

REMEDY AT LAW,
allegation that agreement was obtained by fraud, subject for —, 144

REMOTENESS (*See* INJURY).

REPEAL
of clause in previous Act, for protection of petitioner, 144

REPRESENTATION (*See also* INHABITANTS, LOCAL BOARD),
proposed alteration of — on conservancy board, 60
by local board of harbour commissioners alleging distinct interests, 81
how far — of a trade may be claimed by a trades' association, 115

RESERVOIRS,
bill for extension of time to construct — opposed by local board, 124

RESIDENTS (*See* INHABITANTS).

RES JUDICATA (*See* LEGISLATION, PRACTICE).

RIGHT OF WAY (*See* FOOTPATH, ROAD).

RIPARIAN OWNERS
opposing bill for bridge on ground of injury to property, 60
money payments to — in lieu of compensation water, 144
below point of return of impounded water, how far affected, 147

RIVAL SCHEME,
of petitioners having been rejected, claim to be heard to ask for running
powers over promoters' line, 64

RIVER,
construction of bridge and weir, with removable sluices, over navigable
— opposed by local authorities, 60
water of — impounded, how far persons below point of return of compen-
sation water affected, 147

ROAD (*See also* FOOTPATH),
vestry as — authority opposing underground railway, 40
included in limits of deviation, but no express powers to divert same in
bill, 136
authority, reference to agreement by, with railway company, not confirmed
by bill, 151
interference with main — by pipes of water company, 160

ROAD AUTHORITY (*See* LOCAL BOARD, ROAD).

RUNNING POWERS (*See* RAILWAY (6)).

RURAL SANITARY AUTHORITY (*See* SANITARY AUTHORITY).

SANITARY AUTHORITY (*See also* CORPORATION, LOCAL BOARD),
of adjoining district alleging injurious affecting, opposing the formation of
united district for hospital for infectious diseases, 127
below point of return of impounded water opposing bill, 147

SANITARY,

and police provisions, proposed additional taxation for, opposed by association of landowners and by individual owners of property, 100

SAVING AND PROTECTIVE CLAUSES,

provisions of bill inconsistent with —, 43
claim for — by telephone company on bill for extension of time for constructing tramways, 102
proposed repeal of —, prohibiting heavy goods traffic, opposed by landowner, 130
proposed repeal of — as to compensation water, agreement to supersede, 144

SCHEDULE (*See* LAND).

SCHOOL BOARD

opposing exemption of public buildings from poor-rate, 96

SERVICE OF NOTICES, &c. (*See also* PETITION, PRACTICE).

SEWERS,

interference with — by underground railway opposed by vestry, 40

SHAREHOLDER,

not having dissented at public meeting, 11
alteration of status proposed, 28

SIGNATURES (*See* PETITION, PRACTICE).

SILTING,

bill for borrowing additional money for carrying out works opposed by corporation alleging that tidal flow would be injured by —, 56

STANDING ORDERS,

- 5 [Notices to specify limits of burial ground, hospital, &c.], 127
- 14 [Notices when it is proposed to abstract water from stream], 147
- 43 [Diversion of roads], 136
- 62-66 [Meetings of proprietors to approve bills empowering companies to do certain acts], 26
- 131 [In what cases shareholders to be heard], 26
- 132 [Dissenting shareholders to be heard], 26
- 133 [In what cases railway companies to be heard], 1, 14, 87, 108, 117, 152
- 133A [Chambers of commerce may be heard in relation to rates and fares], 50
- 134 [Municipal authorities and inhabitants of towns], 20, 34, 40, 53, 60, 72, 81, 104, 134, 147, 163
- 134A [Local authorities to have *locus standi* against lighting and water bills], 147, 160, 163
- 151 [Proceedings on bills for confirming Provisional Orders], 26, 127
- 156 [Railway company not to acquire lands], 5.
- 184 [Compensation water], 147, 160
- 208A [Provisional Order Bills to stand referred to committee of selection], 26, 127

STATION (*See* RAILWAY (7)).

STATUS,

alteration of —, by postponement of petitioners' claims to mortgagees, 28.
alteration of —, and diversion of traffic by railway company seeking steamboat powers, 111
alteration of petitioner's —, proposed by bill, 140

STATUTORY RIGHTS,

telephone company without —, opposing bill for extension of time for construction of tramway, 102
water company without —, opposing water bill proposing to supply within area supplied by themselves, 164

STEAMBOATS,

powers for —, sought by railway company, opposed by competing railways, 111
powers for —, opposed by association of steamship owners and individual steamship owners, 115

STEAMSHIP OWNERS,

joint petition of —, and steamship owners' association against bill for conferring steamboat powers on railway company, and claim of association to represent trade interests, 115

STOPPAGE (*See* ACCESS, FOOTPATH, ROAD).**STREAM** (*See* RIVER).**STREET** (*See* ROAD).**STRUCTURAL DAMAGE,**

to church by propinquity of railway, 139

SUBSIDENCE,

apprehended injury by — caused by underground railway, 40

SUPPLY (*See* GAS, WATER).**TAXATION** (*See also* HARBOUR, RATES),

additional — for police and sanitary improvements, opposed by association of landowners and by individual owners of property, 100

TELEPHONE

company without statutory powers opposing bill for extension of time for constructing tramway to be worked by electricity, 102

THROUGH-FARES,

combined railway and sea — proposed by bill, 111

TIDAL FLOW,

alleged injury to — by corporation opposing bill for making deep water channel, 56

diminution to scour of —, alleged by construction of bridge over navigable river, 60

TOLL BRIDGE,

abstraction from — of traffic by railway, 23

owners of — opposing railway giving direct access to town, 36

TOLLS (*See also* BRIDGE, HARBOUR),

harbour commissioners apprehending diminution of — by junction, 81

TRADE (*See also* TRADERS),

injury to — by construction of competing railway, claim of corporation to *locus*, 34

right of association representing particular — to be heard as distinguished from association representing combination of various trades, 115

TRADERS,

and inhabitants opposing interference with access to harbour, 20

affected by removal of competition owing to railway amalgamation, 50

petition of —, where corporation of burgh also petitioning, 50

joint petition of — and corporation of burgh, against withdrawal of railway facilities, 104

TRAFFIC (*See also* RAILWAY (3), TRAMWAY),

"Working" goods — meaning of, 3

diversion of — to harbour subsidised by railway, 5

obstruction of — by transfer of powers from railway to dock and railway company, 14

diversion of — causing injury to competing docks, 17

abstraction of — from existing road bridge by railway bridge, 23

diversion of — causing injury to owners of toll bridge, 36

repeal of Act prohibiting goods — by underground railway, 40

diversion of — owing to proposed combination of railways, 46

diversion of — apprehended by company as dockowners from construction of railway junction, 81

diversion of — and competition by bill for diversion and partial abandonment of authorised line, 108

alteration of status and diversion of — by railway company seeking steamboat powers, 111

clauses prohibiting heavy goods —, landowners opposing repeal of, 130

TRAMWAY,

- extension of time for construction of electric — opposed by telephone company without statutory powers, 102
- construction of — to be worked by cable haulage, causing interference with pipes of water company, 160

TURNPIKE,

- right of owners of — to *locus* against railway discussed, 36

UNDERGROUND (*See* RAILWAY (3), (6) ; WATER.)**UNDERPINNING,**

- power for — and to rebuild sought by underground railway company, 40

VESTRY (*See also* LOCAL AUTHORITY),

- as road authority opposing underground railway, 40

VIBRATION (*See* CHURCH, HOSPITAL, RAILWAY (3)).**VICAR**

- and churchwardens alleging injury to church by construction of railway, 139
- opposing water bill on behalf of inhabitants, 163

WATER,

- extension of time for construction of — works opposed by local board of neighbouring district requiring further supply to their own district, 125
- money payment in lieu of compensation — to riparian owners, 144
- bill to repeal clauses as to compensation water and reservoirs and to impound water, 147
- alleged interference with pipes of — company by construction of tramway to be worked by cable haulage, 160
- interference with main roads by pipes of — company, general *locus* claimed by county council, 160
- bill, opposed by vicar and churchwardens of parish within district of supply, as representing inhabitants, 163
- bill, opposed by non-statutory company proposed to be included in limits of supply, 164

WATERSHED,

- claim by petitioners to — appropriated by promoters under previous Acts, 125

WEIRS AND LOCKS,

- construction of bridge and — with removable sluices opposed by local authorities, 60

WHARF (*See* DOCK).

not such as to enable them to supply it. The inhabitants of Forest Row depend for their water supply upon wells, and it is from Broadstone Warren that the springs issue from the ground which supply these wells. The promoters propose to drive an adit into Broadstone Warren, and the result of that will be to tap these springs and so to injuriously affect the water supply of Forest Row.

The CHAIRMAN: Does this adit interfere directly with any stream above ground?

Rigg: No, the underground water oozes out and flows down the hill, and the adit taps it just before it comes out of the ground. Forest Row is an ecclesiastical district, and the petitioners are the principal inhabitants in this district. The rural sanitary authority are the guardians of East Grinstead as well as of Forest Row, and Forest Row has distinct interests from East Grinstead in this matter, which distinct interests could not be represented by the board of guardians, and therefore the petitioners, the inhabitants of the district, are the proper persons to be heard. As to the objection that this is underground water which will be interfered with, and that following the decision in *Chasemore v. Richards* (29 L.J. Exch., 81) no *locus standi* should be granted, I submit that here there is *prima facie* a well-defined channel, and that the promoters are taking away from the petitioners water which is at the present time theirs. The case is distinguishable from that of the *Cambridge University and Town Water Bill*, 1886 (Rickards & Michael, 95), and within the decision of the Court in the *London and South-Western Spring Water Bill*, 1882 (3 Clifford & Rickards, 179), which latter case is a conclusive authority in favour of a *locus standi* being granted to the petitioners.

The CHAIRMAN: In that case there was geological evidence as to the nature of the chalk, and as to what was known as to the flow of the water underground.

Rigg: In the present case it is obvious where the water comes up, and the promoters propose to take the whole of it by means of this adit. We further allege that the picturesque scenery of the place will be disfigured by the works and erections proposed by the bill, and I cite on this point the case of the *North British Railway (No. 2) Bill*, 1877 (2 Clifford & Rickards, 52).

The CHAIRMAN: I think that is too remote.

Rigg: We also claim a *locus standi* on the ground that the bill proposes to alter our *status*, because, whereas we can now call upon the company to supply us with water by meter for purposes other than domestic purposes, and the company are under sect. 75 of the *East Grinstead Gas and Water Act*, 1878, bound to

supply it upon a scale of charges set out in the Act, the bill by clause 38 proposes to repeal that section, and to relieve the company from this obligation, whereby we shall be placed in a worse position than we now are. That sect. 75 is as follows: "The company shall, at the request of any consumer of water for purposes other than the purposes for or in respect of which the rates or charges are hereinbefore provided or limited" (*i.e.*, domestic purposes), "or may at their own instance, afford a supply of water by meter, and may charge for such supply not exceeding the following rates per one thousand gallons (that is to say):" Then follow the rates. We further say that the promoters will cause great inconvenience to us by the powers in the bill to break up roads in our district.

Baggallay (for promoters): I submit that unless it is established to your satisfaction that there is *prima facie* evidence of this water flowing in a defined stream, the petitioners are not entitled to a *locus standi*. The proposed adit goes inside the hill and takes water from within the hill, and the water flows in the adit at a height considerably above that of the stream in which the petitioners say they are interested. In the *London and South-Western Spring Water* case, the water flowed through chalk in a well-defined stream, and that fact was established by evidence, but here it is totally different. This locality is a spongy basin full of water, and has no defined stream. The *onus probandi* is on the petitioners to show not only that the water goes from where the adit taps it to the stream, in which the petitioners say they are interested, but to show that the water comes in a defined stream into the stream itself; and even then the fact remains that the water from that stream runs away from the so-called district the petitioners claim to represent. With reference to the allegation that we are seeking to relieve ourselves of the obligation to supply the district of the petitioners, we say that these petitioners are not consumers at the present time, and do not petition as such.

The CHAIRMAN: There is something in the point that if the promoters are coming nearer to the petitioners' district, they might then wish to avail themselves of your supply under the conditions of your present Act, and that you are, by clause 38, taking away one of those conditions.

Baggallay: I will not oppose the *locus standi* of the petitioners on that point as consumers, but as inhabitants they would be clashing with the authority within whose district they are, and who might have appeared here them-

selves, and therefore they are not entitled to appear as representatives of the district.

The CHAIRMAN: We have said nothing to the effect that we regard them as representatives of a district.

Baggallay: It would be sufficient for you to say that they are owners and occupiers in a district that is within our limits of supply, and that therefore they might be consumers, and that as consumers, or possible consumers, they have a right to be heard with regard to so much of the bill as proposes to alter their *status* on the question of supply by meter, for other than domestic purposes.

The CHAIRMAN: The *Locus Standi* is *Disallowed* except as against clause 38 of the Bill, and so much of the preamble as relates thereto.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Rees & Frere.*

EDINBURGH STREET TRAMWAYS BILL. [H. L.]

Petition of THE LORD PROVOST, MAGISTRATES AND
COUNCIL OF THE CITY OF EDINBURGH.

20th June, 1892.—(*Before Mr. PARKER, M.P.,
Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.;
and Mr. BONHAM-CARTER.*)

*Tramway Company and Municipal Corporation—
Powers of Agreement with Local Authorities as
to use of Mechanical Power, Purchase of Tram-
ways, &c.—Additional Capital—Power to Com-
pany to accept Lease and Work Tramways—
Tramways Act, 1870, sect. 43 [Future Purchase
of Undertaking by Local Authority]—Resolution
of Petitioners to purchase Tramways of Pro-
motors—S. O. 134 [Municipal Authorities and
Inhabitants, &c.]—Practice—Sufficiency of
Allegation in Petition as to “Injurious
Affecting.”*

The bill authorised the Edinburgh street tram-
ways company to enter into agreements
with the local authorities of the various
districts, through which their tramways
were laid, with reference to the working of
the tramways by mechanical power, the
purchase of the tramways or waiver of
such purchase by the local authorities, and
other matters. It also empowered the tram-
ways company to accept a lease from the
corporation of Edinburgh of any tramway

within the city; and to raise additional
capital. The corporation of Edinburgh,
within which city the largest part of the
promoters' tramways were laid, petitioned
against the bill, and alleged as an additional
reason for their being heard that the period
of 21 years from the date of the passing of
the Act authorising the construction of
the tramways, at the expiration of which
they were entitled by sect. 43 of the Tram-
ways Act, 1870, to exercise their option of
purchase, expired at the end of the present
month, and that they had already passed an
unanimous vote in council to exercise their
right of purchase. They contended that
under the circumstances, no fresh powers
of raising additional capital or otherwise
should be conferred upon the tramways
company, and claimed a general *locus standi*
against the bill. A preliminary objection
on the part of the promoters having been
overruled, that the petition did not suffi-
ciently allege “injurious affecting”:

Held, that the petitioners were entitled to be
heard generally against the bill with the
exception of certain clauses (23 and 24)
inserted for the protection of the Post-
master-General in the event of the tram-
ways being worked by electricity applied in
a manner stated in the clauses.

The *locus standi* of the petitioners was objected
to on the following grounds: (1) the petition
does not allege or show that the petitioners are
the municipal or other authority having the
local management of any town or district
injuriously affected by the bill, or that any
land, house, property, right or interest of the
petitioners will be or can be taken or affected
under the powers of the bill or in consequence
of the execution thereof; (2) the provisions of
the bill with respect to the raising of additional
capital and borrowing of further money
merely affect the internal administration of
the company, and the petitioners are not affected
by the said provisions or entitled to be heard
against them; (3) the provisions of clause 4 are
purely permissive, and will not interfere with
the exercise of any right or duty to the peti-
tioners, and cannot affect them without their
consent. The power thereby conferred of
entering into agreements with other local
authorities does not affect the petitioners or any
of their rights, or confer any right of interference

with the petitioners upon the company or any other local authority; (4) the provisions of clause 5 are consequential upon those of clause 4, and cannot affect the petitioners without their consent, and do not entitle them to be heard against the bill; (5) the power proposed to be conferred upon the company by clause 6 of the bill to accept a lease of tramways affects only the company, and will not confer any preferential right on them to a lease of any tramways which may be acquired by the petitioners, or in any way injuriously affect the petitioners or infringe or restrict their rights; (6) none of the powers sought by the bill will prejudice the petitioners in the acquisition of any tramways or hinder their freedom of action in leasing any tramways which they may acquire; (7) the petitioners have no such rights in the tramways of the company as entitle them to be heard against clause 22 or clause 23 of the bill; (8) the bill does not contain any provision affecting the petitioners, nor does the petition allege or show that the petitioners have, nor have they in fact, any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Cripps, Q.C. (for petitioners): This is a bill promoted by the Edinburgh street tramways company, the largest part of whose system is within the corporate bounds of Edinburgh, asking for additional powers. The corporation have unanimously resolved to give notice to purchase, under the compulsory powers of purchase conferred on them by sect. 43 of the Tramways Act, 1870, and certain provisions in their private Acts, the tramways within their boundaries as from the 30th June, 1892, and, therefore, the corporation will be the actual owners of these tramways very shortly. I submit that if the Court thinks this is a proper case, we are undoubtedly entitled to be heard under S. O. 134, as we are a corporation who allege reasonably that our interests may be affected. These provisions are partly by agreement and partly by compulsion. The preamble of the bill is inaccurate in stating that "the period of 21 years, within which local authorities are by sect. 43 of the Tramways Act, 1870, entitled to purchase the undertaking of the company within their respective districts will, in accordance with the provisions of that Act, and of certain agreements scheduled to the Act of 1871 and the Act of 1881, expire on the 29th of June, 1892, as to parts of the undertaking, and at subsequent dates as to other parts," because in fact the said power of purchase only begins to be operative on the 30th June, 1892, and does not expire until the lapse of six months thereafter.

It is vital to us not to allow an inaccurate statement like that to pass in the preamble just at the very time in which we are seeking to purchase the tramways, and we should be allowed to be heard against it. We specially object to clause 4 of the bill relating to agreements by the company with local authorities. That clause is as follows:—"The company on the one hand and the lord provost, magistrates and council of the royal burgh of Edinburgh and the provost, magistrates and council of the burgh of Leith and of the burgh of Portobello, and the county council of Midlothian, or any of them (which bodies are hereinafter referred to as 'the local authorities'), on the other hand may, from time to time enter into and carry into effect contracts, agreements, or arrangements for or with respect to all or any of the following matters, that is to say, the working by mechanical power within the district or districts of the respective local authorities, parties to such agreement, of any tramways on which mechanical power is authorised to be used by any Act of Parliament, and subject to the provisions of such Act, and the repair and maintenance of any streets or roads in which such tramways are or may be laid; the purchase by or transfer to such local authorities, or any of them, whether jointly or solely, of all or any portion of the tramways, works property, rights, powers and privileges, for the time being of the company, situate or exercisable within their respective districts; the waiver or postponement of any powers of purchasing such tramways, which may, at the time of such agreement being entered into, be or be about to become vested in such local authorities, or any of them, under the provisions of the Tramways Act, 1870, or any agreement scheduled to any of the hereinbefore recited Acts, and the terms and conditions of such purchase, waiver or postponement; the alteration of rates and fares, provided that the maximum tolls and charges, authorised by the Act of 1871, shall in no case be exceeded. Nothing in this section shall empower any local authority to place or run carriages upon any tramway, and to demand and take tolls and charges in respect of the use of such carriages." Clause 6 of the bill, which gives the company power to accept a lease of and work any tramways from local authorities within their districts, we also object to. By clause 8 of the bill the company ask power to raise additional capital, and we submit that it is not expedient that any further capital powers should be conferred upon the company, or that they should be allowed to borrow further money, just as we are about to purchase their undertaking.

We also object to clause 22 for the protection of the National telephone company, and to clauses 23 and 24 inserted at the instance of the Postmaster-General, all of which contain very important limitations as regards working by mechanical power, for the reason that we shall so shortly purchase the undertaking, and the whole responsibility will then be upon us. If we introduced a bill to work by mechanical power, we should be bound by these limitations, whereas we are the proper persons to negotiate on these matters.

The CHAIRMAN: With regard to the capital powers, besides possibly affecting the purchase-value of the undertaking, you would say that the company would not be able to raise money on such good terms as the corporation could.

Cripps: Yes. The promoters further object that we do not allege that we are injuriously affected, but it is not necessary for us to use the exact words, "injuriously affected." We allege in paragraph 18, "that the bill is uncalled for, and the powers sought in it are in conflict with and prejudicial to the rights of your petitioners conferred by Parliament."

Worsley Taylor, Q.C. (for promoters): The allegation in paragraph 18 of the petition is a mere general allegation, having reference to all that goes before, and is not a sufficient allegation that the petitioners are injuriously affected.

The CHAIRMAN: In terms it says the bill is prejudicial not to the district or city, but "to the rights of your petitioners," but then the petitioners represent the city. I do not think the Court has ever insisted upon the precise wording so long as there is a substantial allegation that the district will be injuriously affected, and I do not think you can take any distinction between the rights of the people representing the city and the rights of the city itself.

Worsley Taylor: As to the recital in the preamble, it is in fact correct, because the additional period of six months in which to give notice to purchase is imported by the Tramways Act, 1870, and even if it was incorrect it would in no way bind the petitioners because it refers to the provisions of the Tramways Act, 1870, which gives the further period of six months for notice.

The CHAIRMAN: Do you suppose the Committee on the bill can be expected to pass the preamble as true, which gives six months too little for the purchase?

Worsley Taylor: All the preamble says is, that the period of 21 years mentioned in the Act expires on the 29th June, 1892, and in this the recital is strictly and technically correct.

The whole of the petitioners' rights with regard to purchase remain unaffected, and are preserved.

The CHAIRMAN: There is also clause 8, the capital clause which fixes the period as the 30th June, 1892.

Worsley Taylor: It does not follow because we get this capital, that it is all to be expended upon tramways in Edinburgh, and that would be the only ground on which the petitioners could claim to be interested in it.

Mr. CHANDOS-LEIGH: The corporation, after this date, will be able to give notice to purchase. Is it not fair that they should come to the Committee and say, under the circumstances, it is not necessary nor expedient that you should raise this additional capital?

Worsley Taylor: That gives no ground of *locus standi*. Parliament has never said corporations should be heard in the case of *Tramway Bills* for raising additional capital. The petitioners claim to be heard under S. O. 134, as being injuriously affected. The Tramways Act, 1870, sect. 43, enacts that the promoters shall, after the notice, "sell to them their undertaking, or so much of the same as is within such district, on terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale or other consideration whatever) of the tramway and all lands, buildings, works, materials, and plant of the promoters, suitable to and used by them for the purpose of their undertaking within such district." In tramway undertakings, therefore, unlike gas and water undertakings, it is not the undertaking as a going concern, comprising capital powers, and future profits, but it is merely the physical tramways and effects, without taking the profits or obligations into consideration.

Mr. CHANDOS-LEIGH: The petitioners had a *locus standi* in the House of Lords. Is the bill that comes to this House different to the bill that went to the House of Lords, so far as it affects the question of their *locus standi*?

Worsley Taylor: Yes, one alteration is that, whereas as the bill originally stood an outside authority would have got compulsory powers to buy the tramways in Edinburgh, there being permissive powers between ourselves and the outside authorities, and between ourselves and Edinburgh, nobody outside can, as the bill now stands, possibly interfere with Edinburgh.

The CHAIRMAN: The alteration, though it saves the Edinburgh corporation from interference by another authority, may prevent them from agreeing with an outside authority.

Worsley Taylor: Another alteration is that, as the bill originally stood, we had power to agree for the working of any tramways by mechanical power, and the repair and maintenance of any streets or roads in which such tramways might be laid, whereas the bill, as it now stands, provides for agreements being made as to the working by mechanical power, within the districts of the respective local authorities (who are to be parties to such agreement), of any tramways on which mechanical power is authorised to be used by any Act of Parliament, and subject to the provisions of such Act, as to the repair and maintenance of any streets or roads in which such tramways are or may be laid.

Mr. CHANDOS-LEIGH: The petitioners object to these powers because they are unnecessary and uncalled for, I suppose, because Edinburgh has passed the resolution to purchase the tramways, and a large portion of the tramways are within the corporation of Edinburgh.

Worsley Taylor: The question is whether the petitioners are injuriously affected. They can have no *locus standi* merely because what we propose to do is unnecessary and uncalled for. With regard to the powers of agreement with local authorities conferred on the company by clause 4 of the bill, they are merely permissive. If the petitioners do not like to enter into an agreement with us they need not do so, and the whole of the provisions become absolutely inoperative. As to clauses Nos. 23 and 24 for the protection of the Postmaster-General, in the event of the tramways being worked by electricity other than electrical power carried along with the carriages, it would be useless for the corporation to discuss them, because they could not resist their application to the tramways if they purchase them. Clause 22 for the protection of the National telephone company has also become a stock clause.

The CHAIRMAN: The *Locus Standi* is Allowed, except against clauses 23 and 24 for the protection of the Postmaster-General.

Agent for Petitioners, *Beveridge*.

Agents for Bill, *Rees & Frere*.

GLASGOW AND SOUTH-WESTERN RAILWAY BILL. [H.L.]

Petition of THE PROVOST, MAGISTRATES, AND COUNCIL OF THE ROYAL BURGH OF IRVINE.

17th June, 1892.—(*Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Construction of Railway across Catchment Area of Reservoir of Petitioners—Local Authority supplying Water to District—Public Health (Scotland) Act, 1867, sects. 89, 90 [Supply of Water to Burghs, and Purchase of Land, &c.]—Interference with Streams and Surface Water—Rights of Petitioners as Landowners—Apprehended Pollution of Streams, &c., by Town Manure brought by Railway—Injurious Affecting—S. O. 134 [Municipal Authorities and Inhabitants of Towns].

This was a bill for the construction of a railway, and was opposed by the corporation of Irvine on the ground that the proposed railway would cross in cutting the catchment area and divert surface waters supplying a reservoir constructed by them for the supply of their district under the powers of a Provisional Order made under the Public Health (Scotland) Act, 1867, and confirmed by Parliament in 1876. The petitioners also objected to the railway on the ground that it would be used to convey town manure to lands forming part of the catchment area of this reservoir, and so enable the owners of the land to pollute surface water and streams flowing towards their reservoir. They claimed to be heard (1) as landowners in respect of their reservoir, entitled to an undiminished and unpolluted flow of water thereto, and (2) as a municipal authority of a town injuriously affected by the bill under S. O. 134. The proposed railway was laid out to cross a burn and its tributary, the waters of which the petitioners were empowered by their Act of 1876 to impound, but counsel for the promoters stated that the railway would be carried over these streams without in any way interfering with them, and would interfere with no water flowing in a defined channel, while,

as to the petitioners' apprehension that the railway would bring town manure for use upon lands forming part of the catchment area of their reservoir, it was pointed out that the landowners could at the present time manure their lands in any way they thought fit:

Held, however, that the petitioners were entitled to be heard generally against the bill under S. O. 134 as the local authority of a district injuriously affected by the bill, the Court however expressing their opinion that the real purpose for which a *locus standi* was given to the petitioners was to enable them to protect their waterworks rather than to argue against the general object of the bill.

The *locus standi* of the petitioners was objected to on the following grounds:—(1) the promoters deny that any lands, streams, springs, works, or rights of property of the petitioners, or which they have appropriated or acquired for the purposes of their works or otherwise, will or can be taken or interfered with under the powers of the bill, and the mere fact of the petitioners being described in the book of reference as owners and occupiers of Mannoeh Burn as stated in the petition, does not entitle them to be heard against the bill; (2) even if the bill conferred any powers (as alleged in the petition) of diverting water from the catchment area referred to in the petition or the springs or the underground waters therein mentioned, or of causing or leading to the pollution of any such springs or waters (which the promoters do not admit) the petitioners are not the owners of the land within the said catchment area or of the waters therein or thereon, or of the said springs or underground waters, and have no such rights or interest in such land or such springs or waters as to entitle them, according to the practice of Parliament, to be heard upon their petition against the bill in respect thereof; (3) even if the bill would have the effect stated in paragraph 16 of the petition (which the promoters do not admit) the petitioners have no such rights or interest in the land within the said catchment area as to entitle them to prohibit the use of town manure thereon, or to be heard against the bill with a view to prohibiting the same; (4) in so far (if at all) as the bill authorises interference with any pipes or works of the petitioners, the petitioners and

their said works and their rights of access thereto are sufficiently protected by the provisions contained in general Acts incorporated with the bill, and are not prejudiced or affected by clause 19 of the bill, and the petitioners are not entitled according to the practice of Parliament to be heard upon their petition against the bill in respect of a mere easement or right to lay such pipes or works; (5) the bill is not a bill relating to the water supply of the town or district of which the petitioners are the municipal or local authority, so as to entitle them to be heard against the same under S. O. 134A, nor is such water supply in any way affected by the bill, so as to entitle the petitioners to be heard against the same; (6) the petition discloses no ground upon which the petitioners are entitled to be heard according to practice.

Worsley Taylor, Q.C. (for petitioners): I ask for a *locus standi* on two grounds: first, as landowners, and secondly, as a corporation injuriously affected under S. O. 134. We have got, under statutory authority, certain waterworks and a reservoir in which we impound the streams that flow to it. Land, according to the definition in the Public Health (Scotland) Act, 1867, includes water. As landowners we have this land upon which we have constructed our reservoir with the right to the flow of water down to it through the gathering ground that drains to the reservoir. The promoters propose to construct a railway in cutting with a falling gradient in both directions from our gathering ground, and the result will be that the water instead of running into our reservoir as it now does, will be diverted out of the watershed altogether, and we shall lose it. When this bill was before the House of Lords, Mr. Pope, who appeared for the promoters, admitted that we had an "unquestionable *locus standi*," and that they would abstract our water, and that we must be protected by a clause, and now they object to our *locus standi*. I submit that we are entitled to be heard against the bill as landowners, and we have had notices served upon us as landowners.

The CHAIRMAN: If the *locus standi* were now disallowed, you have no security even for clauses?

Worsley Taylor: No. I submit we are entitled to a *locus standi* in the discretion of the Court under S. O. 134.

Robert Carstairs Reid was here called, and gave evidence that the area of the ground forming a catchment area, which would be affected by the proposed railway above the cutting, would be about 50 or 60 acres upon which water might, if proper clauses were inserted in the bill, be intercepted on the

surface by catchment drains, and so led away from the cutting into the reservoir.

Worsley Taylor: In the House of Lords, the point taken was that we had no right beyond the reservoir. I showed the Committee that we were landowners, and that we had owners' rights in all the water which drains down to our reservoir. We built this reservoir at a cost of £90,000 on the faith of having this gathering ground, and we are bound under the Public Health (Scotland) Act, 1867, Provisional Order Confirmation (Irvine and Dundonald) Act, 1876, not only to supply the inhabitants, but also to give compensation water. The promoters will not only abstract water, but they may pollute the whole of it by having a station on the ground and by bringing down town manure to it, which will be used on the ground. That is injurious affecting within the meaning of S. O. 134. One of the streams in respect of which notices have been served upon is Mannock Burn, which may be diverted or may be polluted.

The CHAIRMAN: Is the Mannock Burn a defined stream?

Worsley Taylor: Yes. We are the local authority with a reservoir, and we come here because we are apprehensive that we may be injuriously affected by what the promoters seek to do. Moreover, we should be injuriously affected, not merely by anything done to the water, but by any suspicion that might be cast upon it which would weaken confidence in the purity of it, whereas it is now miles away from any possibility of contamination.

The CHAIRMAN: You are entered in the Book of Reference as owners and occupiers at Mannock Burn; but the promoters deny that you are owners and occupiers in the ordinary sense.

Worsley Taylor: I am not owner of the water at that particular point, as no man can be owner of the water above his own land; but I am owner of it in this sense that I have a right to prevent the owner of it at that point from either abstracting it or injuriously affecting it by polluting it, and the promoters may do both of these things unless they are prevented.

The CHAIRMAN: I see the Provisional Order of 1876 distinctly speaks of appropriating the waters of the Mannoch or Caddell Burn, that is at the point where the railway crosses. It provides further that before you take water out of the Mannoch Burn you must put a sufficient quantity into the Mannoch Burn. That is enough to show that it is a definite stream, and, although of course there is a point where it ceases to be a definite stream, I should

take the evidence of the Ordnance map with regard to that.

Worsley Taylor: The burn may be passed over by the promoters, and the question is not what they may do if proper provisions are inserted, but what they may have the right to do, if no protective provisions are inserted in the bill. At that point they may pollute the stream. I submit that we are landowners entitled of right to the flow of this water which flows on the surface, and to a certain extent in a defined channel, and that we are owners in this sense of the water falling on to the 50 acres and flowing along the surface to the reservoir, and as landowners entitled to a *locus standi*. I further submit that we are so injuriously affected by the bill that you should, in the exercise of your discretion, allow us to be heard to protect our interests under S. O. 134.

Pope, Q.C. (for promoters): The Court has decided in a number of cases that an allegation of interference with underground water which has not acquired a definite channel does not give a *locus standi*, and I submit there can be no distinction in principle between surface water and water which percolates through the land, and that there is no riparian ownership until water has, so to speak, become riparian in character. A riparian owner has a right to the unpolluted flow of water in a stream when it has reached the stream, but no riparian owner could prevent a proprietor above him putting a water butt upon the land and collecting water from the heavens. The legal rights of the petitioners with regard to this watershed area are limited by the Provisional Order, which gives them no right except that of constructing the reservoirs, and, if necessary, compulsorily taking lands for this purpose, and it is only by the Public Health (Scotland) Act, sect. 89, that they are entitled, if at all, to the water, which they propose to collect before it reaches the reservoirs. The effect of this provision is that the local authority by giving notice under the Lands Clauses Act to those who are entitled to the water in any lake, river, or stream, as therein mentioned, may, without going for an additional Act of Parliament, put in force those powers. But here the petitioners have not availed themselves of the provisions of this statute, and they have made no compensation, they have given no notices, and they have taken no proceedings under sect. 89 of the Public Health (Scotland) Act, 1867, and therefore they have no right at all in that catchment area. They own the reservoirs, and may have riparian rights upon any burn which flows into them, but that is not material because we do not intercept or interfere with

any stream, the Mannoch Burn, or any other.

The CHAIRMAN: The plans show that you are going to interfere with a small tributary as well as with the Mannoch Burn.

Pope: We cross both, but we do not interfere with or intercept either of them. The petitioners' grievance is that we are going to cut off 50 acres of his catchment area before the water has got into Mannoch Burn.

The CHAIRMAN: The petitioners' counsel argued that he was entitled to be heard under S. O. 134 as being injuriously affected. To my mind the question of surface water would go a good deal along with the question of injurious affecting under the Standing Order, because I do not suppose the Court would give a *locus standi* to a private owner where there was a risk of a less quantity of water running into a burn that was not proposed to be used for any public purpose, but when you come to the injurious affecting of a large population by interference with the catchment area that supplies them, I think that has some weight in addition.

Mr. CHANDOS-LEIGH: We have carried S. O. 134 very far in several instances. The next Standing Order is absolutely mandatory, and would have applied if this had been a water company coming for a bill instead of a railway company. I also feel that the Corporation of Irvine did appear in the House of Lords, when their *locus standi* was not objected to, and they now take their stand upon S. O. 134.

Pope: I do feel somewhat pressed with the wide character of S. O. 134, and I submit that if, in the exercise of your discretion, you should think it fair that the petitioners should be heard with regard to any injury to their water-works, you should not stretch that Standing Order so far as to give them a *locus standi* against the preamble for the construction of the railway.

The CHAIRMAN: The Court are unanimously of opinion that the *Locus Standi* should be *Allowed*, and that it should not be limited to clauses, but they think it fair to express their opinion that the real purpose for which it should be given should be to protect the water-works rather than to argue against the general object of the bill.

Agent for Petitioners, *Beveridge*.

Agents for Bill, *Sherwood & Co.*

GLASGOW AND SOUTH-WESTERN RAILWAY (No. 2) BILL.

Petition of THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY AND THE ARDROSSAN HARBOUR COMPANY.

11th April, 1892.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Competition—Railways and Harbour Company.

This was a bill for vesting the undertaking of the Ayrshire and Wigtownshire railway company in the Glasgow and South-Western railway company. It was opposed by the Lanarkshire and Ayrshire railway company (who were worked in perpetuity by the Caledonian railway company) and the Ardrossan harbour company on the ground of competition, inasmuch as it would make the Glasgow and South-Western company the owners of a through route between Glasgow and Stranraer and Portpatrick, *viâ* Kilmarnock and Girvan, with the result that they would be able to compete at Stranraer and Portpatrick with the petitioners for Irish traffic at present sent over the Lanarkshire and Ayrshire railway to Ardrossan harbour for shipment to Ireland. The promoters themselves had a railway from Glasgow to Ardrossan, which formed a competitive route to Ardrossan with that of the Lanarkshire and Ayrshire company, and also a railway from Glasgow to Portpatrick and Stranraer, *viâ* Kilmarnock, Dumfries, and Castle Douglas, to Stranraer and Portpatrick, but the petitioners contended that the route by the latter railway was so circuitous that no considerable traffic was sent by it, and that therefore the new route to Stranraer and Portpatrick, which the promoters would acquire in their own hands under the bill, would in effect create a new competition with the petitioners for Irish traffic. The petitioners urged as an additional argument for their being heard that the bill was one for the amalgamation of two railway companies, and that the Court was accustomed to regard with favour the claims of petitioners to be heard against such bills. *Contra*, it was argued on behalf of the promoters that there was an existing competition between the Lanarkshire and Ayrshire company and the promoters for traffic between Glasgow and Ardrossan; that the promoters already possessed a route of their own between Glasgow and Stranraer and Portpatrick; and that they already worked the Ayrshire and

Wigtownshire railway under a lease for 999 years, entered into with the sanction of Parliament; and that therefore the bill would have no material affect upon the present position of the petitioners. In the result the Court *Disallowed* the *Locus Standi* of both Petitioners.

The case involved a consideration of a number of circumstances connected with the past history and relations of the different companies concerned, and was of no practical value as a precedent.

Worsley Taylor, Q.C., appeared for the petitioners; *Balfour Browne, Q.C.*, for the promoters.

Agents for Petitioners, *Martin & Leslie*.

Agents for Bill, *Sherwood & Co.*

GLASGOW CORPORATION WATER FILL.

Petition of THE CALEDONIAN RAILWAY COMPANY.

31st May, 1892.—(Before Mr. PARKER, M.P., Chairman, &c., &c.)

The objections to the *locus standi* of the petitioners were withdrawn.

Locus Standi Allowed.

Agents for Petitioners, *Grahames, Currey & Spens*.

Agents for Bill, *Martin & Leslie*.

GLASGOW, YOKER AND CLYDEBANK RAILWAY BILL.

Petition of (1) THE LANARKSHIRE AND DUMBAR-
TONSHIRE RAILWAY COMPANY; AND (2) THE
CALEDONIAN RAILWAY COMPANY.

10th March, 1892.—(Before Mr. PARKER, M.P.,
Chairman; The Hon. E. CHANDOS-LEIGH,
Q.C.; and Mr. BONHAM-CARTER.)

*Railway Extension—Lands of other Railway
Companies Scheduled—Formation of Junction
—Landowners' Locus Standi claimed by Com-
panies—Petitions alleged to be in Breach of
Good Faith—Violation of Provisions of Exist-
ing Act—Construction of Act of Parliament—
Competency of Court in such matters—Practice.*

The bill authorised the extension of the pro-
moters' railway by the construction of a

railway, No. 1, which would cross some land belonging to the Lanarkshire and Dumbartonshire railway company, intended to be used by them for station purposes, and of a railway, No. 2, which would form a junction with the railway of the Lanarkshire and Dumbartonshire railway, over whose land compulsory powers of purchase were given by the bill. A general *locus standi* against the bill was claimed by (1) the Lanarkshire and Dumbartonshire company, and also by (2) the Caledonian railway company, who were subscribers of half the capital of the former company and were about to work its undertaking, and who further alleged that the railways proposed by the bill would cross in two places a canal belonging to them. The promoters alleged that both the petitions were deposited in breach of faith and of a provision contained in sect. 90 of the Lanarkshire and Dumbartonshire Railway Act, 1891, which prohibited both the petitioning companies from opposing an application to Parliament by the promoters for power to extend their railway to join the North British railway at or near Dalmuir, except for the purpose of securing the insertion therein of provisions for the protection of the Lanarkshire and Dumbartonshire railway and works and the canal belonging to the Caledonian railway company. The promoters contended that the right of the petitioners to be heard was strictly limited by the Act of 1891 to a claim for protective clauses. *Contra*, it was urged by the petitioners that the railways proposed by the bill were not those contemplated by sect. 90 of the Act of 1891, and were laid out in such a manner as to render adequate protection to the petitioners by clauses impossible:

Held, that the Court could not decide the question of breach of faith raised by the promoters, which was a question which would involve the hearing of evidence, nor would it construe sect. 90 of the Act of 1891, both of which were matters for a Committee on the bill to decide, and that both petitioners were entitled to a general *locus standi* against the bill, subject to the

rights of the parties under the Act of 1891.

The *locus standi* of both petitioners (1) and (2) was objected to on similar grounds, namely : (1) the petition, which alleges that the preamble of the bill is untrue and prays that the bill may not pass into law, is deposited in breach of good faith and of a parliamentary bargain recognised in and affirmed by certain provisions of the Lanarkshire and Dumbartonshire Railway Act, 1891; (2) the promoters admit the right of the petitioners to be heard in the manner and to the extent mentioned in and defined by sect. 90 of the said Act (namely to secure the insertion of certain protective clauses) but not further or otherwise; and the promoters deny that the petitioners are at liberty to depart in the present Session from the terms on which the Lanarkshire and Dumbartonshire Railway Act was obtained so recently as last Session, and submit that the *locus standi* of the petitioners should be limited accordingly.

Balfour Browne, Q.C. (for petitioners (1)) : The bill proposes to cross by railway No. 1 a piece of ground which has been acquired by us for station purposes, and of which we are landowners, and further the promoters propose by railway No. 2 to form a junction with a railway authorised to be constructed by the petitioners in 1891, and for that purpose they seek power to enter upon and take and use our land and property, and we claim a general *locus standi* as landowners. The promoters allege that we have deposited our petition in breach of good faith, and of a parliamentary bargain recognised in and affirmed by certain provisions of the Lanarkshire and Dumbartonshire Railway Act, 1891. This is a matter which can only be determined by evidence, and we submit that it is not a matter which this Court will enquire into. We, of course, deny that we have deposited our petition in contravention of sect. 90 of the Lanarkshire and Dumbartonshire Railway Act, 1891, as the promoters say. That section is as follows: "In the event of the Glasgow, Yoker and Clydebank railway company making application to Parliament in any or one of the next five ensuing Sessions for power to extend the existing railway of that company to join the North British railway at or near Dalmuir, neither the company nor the Caledonian company shall oppose such application, except for the purpose of securing the insertion therein of provisions for the protection of the railway and works of the company and the Forth and Clyde canal of the Caledonian

company and the traffic thereon." I deny that the railways proposed by the bill are such as were intended by that section, or that we have deposited this petition in violation of that section, and I say that whether we have or not is a question not for this Court, but for a Committee on the bill.

Pember, Q.C. (for petitioners (2)) : We are subscribers of half the capital of the Lanarkshire and Dumbartonshire railway, and we are going to work their line; we are therefore in the same position as the company, and entitled to go before the Committee and see that no harm is going to be done to this railway. Moreover, we are owners and workers of the Forth and Clyde canal, which the railway proposed by the bill will cross in two places, and in so doing will interfere very materially with it, and on this ground also we are entitled to a *locus standi*. It is for the Committee, and not for this Court, to interpret the Act of 1891, and to say whether or not we shall be heard. We submit that the promoters have laid out this line in a way incompatible with our getting any protection at all, because it cuts our land in two, injures our works, and must injure our traffic at a crossing, and we have therefore a right to be heard against the bill. The allegation as to breach of faith, which we deny, is a matter for the Committee and not for this Court. It implies going into evidence of what took place last year, and that is a matter for the Committee to consider.

The CHAIRMAN : We should leave to the Committee the interpretation of sect. 90 in the Act of 1891.

Mr. CHANDOS-LEIGH : That is my opinion also.

The CHAIRMAN : I think also it is hardly a matter for this Court to go into, the question of breach of faith. It is a question of degree, and I think also the construction of the statute is not a question for this Court.

Pembroke Stephens, Q.C. (for promoters) : The petitioners (1) and (2) are practically two different sets of people with the same interest, both wishing to be heard. As a matter of fact railway No. 2 is struck out of the bill. We however admit the petitioners' right to be heard to the extent mentioned in and defined by sect. 90 of the Act of 1891, that is to secure the insertion of certain protective clauses, but not otherwise.

The CHAIRMAN : If the petitioners went before the Committee, it would be entirely in the power of the Committee to restrict their case in the manner prescribed by sect. 90 of the Lanarkshire and Dumbartonshire Railway Act, 1891.

Pember: We have no right to prevent an extension railway of some kind or other, but we have a perfect right within those limits to say, this is an extension that ought not to be permitted because you could not give us adequate protective clauses.

The CHAIRMAN: You would be bound to show that there was a possible method of extending the promoters' railway, and, at the same time, protecting you.

Pembroke Stephens: The decision of the Court in *Provisional Orders (Ireland) Confirmation (Holywood, &c.) Bill, 1877* (2 Clifford & Rickards, 59), is adverse to the claim of the petitioners to be heard. At any rate, I submit the petitioners must be satisfied with such a *locus standi* as sect. 90, of the Act of 1891, gives them, and I ask the Court to limit their *locus standi* in accordance with the terms of that Act.

Pember: I will undertake on behalf of both petitioners that they shall not attack the general policy of an extension of the promoters' railway, as the bill proposes, or its public necessity, but subject to that limitation we ought to be heard generally against the preamble of the bill.

The CHAIRMAN: We should not wish it to appear as if we had overlooked this condition in the 90th section of the Act of 1891. We give a general *locus standi* to both petitioners, subject to the Act of 1891.

Locus Standi Allowed accordingly.

Agents for Petitioners (1), *Martin & Leslie*.

Agents for Petitioners (2), *Grahames, Currey, and Spens*.

Petition of (3) THE MAGISTRATES AND POLICE COMMISSIONERS OF THE BURGH OF CLYDEBANK.

Construction of Railway on Embankment—Police Commissioners of Scotch Burgh—Communication between different parts of Burgh affected—Interference with Roads and Sewers—General Police and Improvement (Scotland) Act, 1862—Roads and Streets in Police Burghs (Scotland) Act, 1891—General Injurious Affecting of Burgh—S. O. 134—[Municipal Authorities and Inhabitants of Towns].

The bill authorised the construction of a railway, for the most part on an embankment, through the burgh of which the petitioners were the local and sanitary authority under the General Police and Improvement

(Scotland) Act, 1862. The petitioners alleged interference with roads and sewers in the burgh, and claimed a general *locus standi* on account of such interference. They also claimed to be heard under S. O. 134, on the allegations in their petition that their burgh was injuriously affected by the bill, enumerating a number of ways in which the construction of the railway proposed by the bill would injure the burgh, *e.g.*, by cutting off access from one part of the burgh to another, by danger caused from carrying the railway parallel to a public highway and underneath a canal, and by the demolition of tenement houses occupied by the working classes:

Held, that the various grounds of complaint alleged by the petitioners amounted to such an "injurious affecting" of their burgh within the meaning of S. O. 134, as to entitle them to be heard generally on their petition against the bill.

The *locus standi* of the petitioners (3) was objected to on the following grounds: (1) neither the burgh of Clydebank, nor its inhabitants, nor any rights, property, or interests of such burgh or inhabitants, are or will be so affected by or under the powers of the bill within the meaning of the Standing Orders and the practice of Parliament, as to entitle the petitioners to be heard; (2) the petitioners do not allege that they are the owners of the streets referred to in their petition as Miller-street, Alexander-street, Hume-street, Belmont-street, and Canal-street, or that such streets are under the management of, or are vested in, or are within the jurisdiction of the petitioners. In fact such streets are merely contemplated, and not actual streets, and are still in the condition of agricultural land; (3) the road or highway referred to in the petition as "Kilbowie-road," is not vested in or under the management of the petitioners, but is vested in and under the management of the county council of the county of Dumbarton, with whom the promoters have arranged as to the manner in which the intended railway No. 1 proposed to be authorised by the bill shall cross the said road, and a clause as to such crossing has been agreed to between the promoters and the said county council for insertion in the bill; (4) neither the dwelling-house nor the strip of land, nor the Union church referred to in paragraph 8 of the petition belong to the

petitioners, and they have no interest therein entitling them to be heard; (5) the Forth and Clyde canal referred to in paragraph 10 belongs not to the petitioners, but to the Caledonian railway company, who have petitioned, and are the proper persons (if any) to be heard as to that matter; (6) with regard to the sufficiency of existing railway accommodation in the district, and as to any different method of accomplishing the objects of the proposed railways, these points are raised at great length in the petitions of the Caledonian railway company and of the Lanarkshire and Dumbartonshire railway company, and the desire of the petitioners to be heard in addition to and practically in support of these opposing railway companies is not a legitimate desire on the part of Commissioners "formed under the General Police and Improvement (Scotland) Act, 1862;" (7) the petitioners ought only to be heard (if at all) as to any clauses which can be shown to affect the burgh, and not generally against the bill on the preamble thereof.

Worsley Taylor, Q.C. (for petitioners (3)) : The railway proposed by the bill is laid out to run through the borough of Clydebank for a mile, and for the greater part of that distance it will be carried on a bank from 14 to 28 feet high. We allege that we are injuriously affected, and claim a *locus standi* under S. O. 134. We also claim a *locus standi* under a number of heads, some of greater, some of less, importance, but I ask the Court to take the whole of the grounds together and say, as it has been said in other cases, that there is under one head or the other such a serious amount of injurious affecting that we ought to be heard. We allege that the proposed line is to run 300 yards from an existing line going in the same direction, and therefore a large part of the borough will be shut up between the two railways, the proposed railway being carried on a bank 14 to 28 feet high, and this will have the effect of practically cutting off all access from the parts next to the river where there is ship-building yard and other industries growing up. We further allege that the proposed railway will interfere with certain of our streets by the embankment on which it is to be run, cutting off all possibility of our continuing these streets in one direction, and on the same level, and this would seriously and injuriously affect the whole of our burgh, and we are entitled to be heard upon this account. As the road authority, we have also a right to be heard as to the rest of the land under our control, though it has not been taken over by us as a street, and is unfinished; but we have the power to require it to be paved and completed in a certain way.

The bill proposes to authorise the lowering of a road, and although this road is vested in the county council of Dumbarton, yet we, as the road authority, have, in pursuance of the Roads and Streets in Police Burghs (Scotland) Act, 1891, served them with a requisition, and in consequence thereof, the street will become vested in us on the 15th May, and we are therefore the proper persons to be heard. We also allege that the construction of the proposed railways will interfere with our sewers, by interfering with the sewerage of 9,000 persons, and that such interference will be a matter of serious consequence to us and to the community. There is no objection to this allegation by the promoters, and that would alone give us a *locus standi*. This question whether the rights in sewers gives a general or limited *locus standi* has been discussed in several cases, and it has been held that the local authority being owners of sewers, and having the control of them, is entitled to a general *locus standi*.

The CHAIRMAN: There ought to have been a formal objection to that if it was intended to be argued.

Worsley Taylor: On this point I cite in my favour the case of the *East of London, Crystal Palace and South-Eastern Junction Railway Bill*, 1884, on the petition of the Metropolitan Board of Works (3 Clifford & Rickards, 395), and I submit that on the principle decided in that case I have a clear general *locus standi* on account of interference with sewers alone. As another ground of *locus standi*, we allege that the proposed railway will run at a distance of about 35 feet from and parallel with the main high road for about half-a-mile, which will be most dangerous for vehicular traffic owing to the passing of trains and engines. The bill also proposes to acquire a number of dwelling-houses, and will also render useless a strip of land for building purposes, which is greatly needed to meet the growing demand for workmen's dwellings, and will seriously affect the amenity of the burgh and the district.

The CHAIRMAN: You constructed the sewers for these houses, and if they should be removed these sewers would become useless?

Worsley Taylor: Yes. There is in this case a general interference with the well-being and the interests of a number of people, not only those whose land is taken, but those living alongside. In the *Manchester, Sheffield, and Lincolnshire Railway (Extension to London etc.) Bill*, 1891, on the petition of Owners, Lessees, and Occupiers, &c., in *Marylebone and Hampstead* (Rickards & Saunders, 133), the petitioners, a number of people in the district generally, whose houses were not taken,

were allowed to be heard, whereas here the whole body of inhabitants is represented, and there is an interference with the amenity of the burgh, and with our material interests, and with our rates. We further say that it is proposed to construct railway No. 1 under the Forth and Clyde canal, at a point where the canal is on a high embankment, and that this would be attended with considerable risk to the burgh. The promoters object that we are not the owners of the land, but that the Caledonian company are, and that they have petitioned. We submit that they cannot in any way represent us, and, moreover, they may perhaps not appear to oppose, or they may get a clause to protect them, but such clause would not necessarily protect our interests.

Pembroke Stephens, Q.C. (for promoters): As regards the general allegations of injurious affecting, S. O. 134 is discretionary no doubt, but there is no use in its being so if mere interference with a sewer in any part of a district gives a local authority a landowner's general *locus standi*. As regards interference with certain streets, we say these streets do not in fact exist at all, and that their future site is at present agricultural land. The petitioners do not represent the owners, nor do they say that the owners have proceeded so far as to get this land authorised as streets. As to the interference with the sewers, if there is anything fairly required for the protection of the burgh, we concede a *locus standi* limited to this matter. The case cited where the Metropolitan Board of Works was granted a *locus standi* followed several others, in which a special *locus standi* had been claimed by the Metropolitan Board of Works on the ground that in respect of general power of supervision and control they stood in a different position from the ordinary local authorities, and therefore for the purpose of that general supervision, the right of the Metropolitan Board of Works to a general *locus standi* was recognised. I submit that the Metropolitan Board of Works stands in an exceptional position and that this has always been recognised, and that the petitioners are not entitled to have a general landowner's *locus standi* in respect of the interference with the sewers. With reference to the acquisition of certain houses, nobody to whom they belong objects, and they are only four in number.

Worsley Taylor: We do not agree with you as to that. There are, in fact, ten houses in one tenement; they are working-men's dwellings.

Mr. Chandos-Leigh: Then the authorities come in, and say, "This is a great displacement of the working population."

Pembroke Stephens: The real reason the petitioners wish to be heard is to set up an alternative scheme; and this is disclosed in paragraph 14 of the petition, where they say, "The object desired by the proposed railways Nos. 1 and 2 (if any adequate reason existed for its accomplishment, which your petitioners contend does not) could be otherwise accomplished, namely, by a branch line from the North British railway, east of Kilbowie station, to join the company's railway east of Yoker station." This is really what they want a general *locus standi* for, in order to enable them to set up a branch railway, and according to practice they are not entitled to do this. The granting of a *locus standi* in this case is entirely a matter for the discretion of the Court. The petitioners pile up a multitude of little claims, and say they have not a strong *locus standi* upon any one ground, but ask upon these little claims for a general *locus standi* which will enable them to raise an alternative scheme.

The CHAIRMAN: We do not put it upon the sewer case alone, but we take that together with several other points, some large, some small, and upon the whole there being no doubt that the petitioners are the proper representative body to be heard as to most of the interests concerned, we think they are entitled to a general *Locus Standi*.

Agent for Petitioners, *Beveridge*.

Agents for Bill, *Robertson & Co.*

LANCASHIRE AND YORKSHIRE, AND LONDON AND NORTH - WESTERN RAILWAYS (STEAM-VESSELS) BILL.

Petition of (1) THE BELFAST STEAMSHIP COMPANY; AND (2) THE GLASGOW, DUBLIN, AND LONDONDERRY STEAM PACKET COMPANY.

2nd May, 1892.—(Before *Mr. PARKER, M.P., Chairman*; *Sir GEORGE RUSSELL, M.P.*; *Mr. SHIRESS WILL, Q.C., M.P.*; *The Hon. E. CHANDOS-LEIGH, Q.C.*; and *Mr. BONHAM-CARTER.*)

Railway Companies asking for Steamboat Powers
—*Petitions of Independent Steamship Companies*
—*Competition*—S. O. 156—[*Railway Companies not to acquire Canals, Docks, Steam-Vessels, &c.*]

The bill empowered the Lancashire and Yorkshire and the London and North-Western

railway companies jointly to provide steam-vessels and use them for traffic of all descriptions, between Fleetwood, in Lancashire, Belfast and Londonderry, in Ireland, and the Isle of Man. The petitioners (1) carried traffic by means of their own steamers between Liverpool and Belfast, and Liverpool and Londonderry, and the petitioners (2) carried traffic between Morecambe, in Lancashire, and Londonderry, and both petitioners derived a portion of their Irish traffic from the railways of the two promoting companies, which traffic they argued would be carried in future by steam-vessels belonging to the two railway companies. Both petitioners (1 and 2) claimed to be heard on the ground of competition, and on its being stated that they both ran steamers direct to Londonderry, a *locus standi* on this ground was conceded by counsel for the promoters, and allowed by the Court.

The *locus standi* of the petitioners (1 and 2) was objected to on similar grounds, namely: (1) it is not alleged in the petition, nor is it the fact that the petitioners own or run steam-vessels engaged in carrying traffic or carry traffic between any of the places between which the bill proposes to authorise the promoters to run or work steam-vessels and carry traffic; (2) the bill does not empower the promoters to run steam-vessels or carry traffic between Belfast and Liverpool, or between Londonderry and Liverpool, or between Morecambe and Londonderry, which are the only places named in the petitions, between which the respective petitioners run steamers or carry traffic; (3) no such competition between the promoters and the petitioners will or can be created or arise under the powers of the bill as to entitle the petitioners to be heard against the bill; (4) so far as, if at all, competition will or can arise under the bill in respect of traffic between Londonderry and the interior towns of England, such competition will not be a new competition, but merely an improvement of existing competition, inasmuch as the promoters already carry by their steamers, *viâ* Belfast, traffic from England destined for Londonderry, and *vice versâ*; (5) even if the competition alleged in the petition were a new competition (which your petitioners deny), it is of too remote a character to entitle the petitioners, according to the practice of Parliament, to be heard against the bill; (6) the

petitioners are not entitled to be heard against the provisions of the bill authorising the raising or application of capital or funds for the purpose of improving the existing means of competition; (7) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard against the bill.

Pembroke Stephens, Q.C. (for petitioners (1)): The bill (clause 4) proposes to give steamboat powers to the two companies to enable them to own steam-vessels, and to run them between Fleetwood and Belfast, and Londonderry and the Isle of Man, the companies having already powers to run steamboats between Fleetwood and Belfast, the bill proposing to extend these powers to Londonderry. The petitioners were established in 1859, to carry on a cross-channel service between Liverpool and Belfast, and Liverpool and Londonderry, and they allege that the bill will enable these two companies to enter into competition with them, and by so doing injuriously affect their interest. At the present time, there is no particular trade at Fleetwood itself which is really an inlet or outlet for Irish traffic, and there is no other natural route from the North of Ireland, excepting Belfast to Morecambe, or the route of the petitioners from Belfast to Liverpool, and any traffic which will be carried by the promoters will be abstracted from one or other of these two routes. This same question was discussed in the *Lancashire and Yorkshire and London and North-Western Railway Companies (Steamboats) Bill, 1870* (2 Clifford & Stephens, 59), and in the *London and North-Western (Steam-Vessels) Bill, 1870, ib. 65*, when the steamship owners' associations were allowed a *locus standi*, though none of the shipowners composing the association had any steamboats running to Fleetwood.

Pope, Q.C. (for promoters): I will not dispute the principle that where traffic conveyed by one route will be abstracted and diverted to another, that gives a ground for *locus standi*, provided that the competition so created is alleged sufficiently clearly in the petition. I should concede at once if you have a sea service to Londonderry, it would simply be a question whether, by the powers we seek, we might divert traffic going to the inland towns of England by way of Fleetwood instead of Liverpool.

Pembroke Stephens: We have a steamer going every night from Liverpool to Belfast, and one that goes three times a week from Liverpool to Londonderry without calling at Belfast.

Pope: A glance at the map will show that our route would obviously be a competitive route, and I understand the petitioners book

through. I shall not, therefore, contest further their *locus standi*.

Balfour Browne, Q.C. (for petitioners (2)) : The petitioners are a company trading between Morecambe and Londonderry, and the traffic which would be carried by the route proposed to be authorised by the bill, would be of precisely the same nature as that now carried by the petitioners over their route, and the petitioners allege that they will be injuriously affected by the competition created by the bill. It has been decided in many cases that the two points of departure or arrival, in respect of which the competition is alleged, need not necessarily be the same or close together, and on this point I cite the case of the *Felirstowe Railway and Dock Bill*, 1886, on the petition of the *General Steam Navigation Company and the Steamship Owners' Association* (Rickards & Michael, 100), and the case of the *Manchester, Sheffield, and Lincolnshire Railways (Steamboats) Bill*, 1889, on the petition of the *Corporation of Hull, and Shipowners and Traders at Hull and Goole, &c.*, *ib.* 270. We do actually exchange traffic with the London and North-Western, as well as with the Midland railway company at Morecambe, and that traffic it will be in the power of the companies under the steamboat powers of the bill to divert and take away to Fleetwood. It is the invariable practice, in cases of this kind, to allow an independent steamboat company to be heard, for they are the only persons who can properly put before the Committee the reasons why railway companies should not have steamboat powers conferred upon them. The general attitude of Parliament towards bills like this is shown by S. O. 156. We submit that these companies should not be allowed to come and compete with us, and that we are entitled to a *locus standi* on the ground of competition.

Pope, Q.C. : I concede the *locus standi* of these petitioners also.

The CHAIRMAN : The *Locus Standi* of both Petitioners is Allowed.

Agents for Petitioners (1), *Wyatt & Co.*

Agents for Petitioners (2), *Grahames, Currey and Spens.*

Agents for Bill, *Sherwood & Co.*

LANCASHIRE AND YORKSHIRE RAILWAY (STEAM-VESSELS) BILL.

Potion of (1) THE CITY OF DUBLIN STEAM PACKET COMPANY; AND (2) THE GLASGOW, DUBLIN AND LONDONDERRY STEAM PACKET COMPANY.

2nd May, 1892.—(Before Mr. PARKER, M.P., Chairman : Sir GEORGE RUSSELL, M.P.; Mr. SHIRESS WILL, Q.C., M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Railway Company asking for Steamboat Powers —Independent Steamship Company — Competition.

Clause 4 of the bill empowered the Lancashire and Yorkshire railway company to provide and run steam-vessels between the ports of Fleetwood and Liverpool, in Lancashire, and between those ports, or either of them, and Dublin. Petitioners (1) owned and ran steamers between Liverpool and Dublin, and after this fact had been stated, the promoters conceded their *locus standi* on the ground of competition. As regards petitioners (2) they owned and ran steamers between Morecambe and Dublin, but it was objected on behalf of the promoters that, as these petitioners derived their traffic at Morecambe from the Midland railway company, the traffic not originating at Morecambe, but coming from towns in the north of England served by the Midland company, they were not entitled to be heard against the steamboat powers sought by the promoters of the bill, being dependent upon the Midland company for traffic at Morecambe, and being by virtue of their steamers between Morecambe and Dublin, in possession of only the sea portion of a through route between the north of England and Dublin: Held, however, that these petitioners (2), as well as petitioners (1), were entitled to be heard against the bill on the ground of competition.

The *locus standi* of the petitioners (1) was objected to on the following grounds; (1) the petition does not allege, nor is it the fact, that any lands or property of the petitioners can be

taken compulsorily under the powers of the bill; (2) the only ground on which the petitioners claim to be heard is that of competition; but the bill does not seek any power which entitles the promoters to set up competition sufficient to entitle the petitioners to be heard on their petition against the bill; (3) the cross-channel routes alleged to be served by the petitioners are between Morecambe and Dublin and between Morecambe and Londonderry; the other routes are only coasting services between places between which the petition does not allege, nor is it the fact, that the promoters seek to establish any steamboat service; (4) the cross-channel route sought by the promoters by the bill are between Liverpool and Dublin, and between Fleetwood and Dublin. Neither of those routes are served by the petitioners' steam-vessels, and the establishment of a service for those routes, as sought by the promoters, would not create such a competition with the petitioners as entitles them to be heard on their petition against the bill; (5) the promoters do not admit the allegations contained in paragraphs 5 to 9 (both inclusive) of the petition; and even if true, those allegations would not, nor would any of them, entitle the petitioners to be heard against the bill; (6) if, as the promoters allege, the petition does not disclose any competition which entitles the petitioners to be heard on their petition, the allegations and objections contained in paragraphs 10 and 11 of the petition are not matters on which they are entitled to be heard against the bill; (7) the bill does not contain any provision authorising any interference with the property, rights, powers or privileges of the petitioners; (8) the petition does not allege or disclose any ground of objection which entitles the petitioners, according to the practice of Parliament, to be heard on their petition against the bill.

The *locus standi* of the petitioners (2) was objected to on the following grounds: (1) the petition does not allege, nor is it the fact, that any lands of the petitioners can be taken compulsorily under the powers of the bill; (2) the bill does not contain any provision authorising any interference with any property, rights or privileges of the petitioners; (3) so far as the bill seeks to authorise the promoters to run steam-vessels between Dublin and Liverpool, the promoters admit the right of the petitioners to be heard thereon, but the promoters deny that the power they seek by the bill to run steamers between Fleetwood and Dublin, or between Fleetwood and Liverpool, would, in either case, create a competition which would entitle the petitioners to be heard against so

much of the bill as relates to that power; (4) except as to the power to run steamers between Dublin and Liverpool the petition does not allege or disclose any ground of objection which entitles the petitioners to be heard on their petition against the bill.

Pembroke Stephens, Q.C. (for petitioners (1)) : The petitioners run steamers between Liverpool and Dublin, and the promoter's admit our right to be heard against the proposals in the bill for running their steamers between Liverpool and Dublin, but we ask to be heard against the proposal to enable the promoters to run steamers from Fleetwood to Liverpool and from Fleetwood to Dublin, and we object to the whole of the proposals conferring steamboat powers on the company. The combined effect of this bill and of the *Lancashire and Yorkshire and London and North-Western Railway Companies (Steam-Vessels) Bill, 1892* (*supra*, p. 195) would be to make Fleetwood a great centre and an important steamboat port, to which it would be the interest of the Lancashire and Yorkshire company to send their traffic. At the present moment we are carriers of the traffic between Liverpool and Dublin by arrangement with the promoters, and the effect of this bill would be to take the traffic off our steamboats on to theirs, and I submit we are clearly entitled to a *locus standi* on the ground of competition.

Balfour Browne, Q.C. (for petitioners (2)) : We are traders between Morecambe and Dublin, and run boats three days a week between these ports. By clause 4 of this bill the Lancashire and Yorkshire railway company are proposing to provide and run boats from Fleetwood to Liverpool, and between those ports or either of them and Dublin, and this would divert the traffic from a great district in the north of England, which now goes to Dublin *viâ* Morecambe, and it would also divert the traffic from the south of Ireland, which now comes *viâ* Dublin and Morecambe, by enabling it to be carried by the boats of the Lancashire and Yorkshire company. We therefore claim a *locus standi* on the ground of competition.

Pope, Q.C. (for promoters) : I concede the *locus standi* of petitioners (1) the City of Dublin Steam Packet company. As regards the petitioners (2), the Glasgow, Dublin, and Londonderry Steam Packet company, I submit they are not entitled to a *locus standi* on the ground that competition for through traffic between a railway company having a route of its own by means of its railway and steamboats combined and a railway company and an independent steamboat company jointly carrying traffic over the same route is not such

a competition as entitles the steamship company, whose steamboats only form a portion of the through route, to be heard. This principle was acted upon in the *Glasgow and South-Western Railway (Steam-Vessels) Bill*, 1891 (Rickards & Saunders, 111). What the bill proposes to do will be an improvement of the competition by way of Fleetwood, and in so far as we take powers to extend our Belfast traffic to Londonderry, this would be a new competition, but I submit this competition is not of a character to entitle the petitioners to be heard, as they run in connection with the Midland company, who could control the traffic which the steamboat company would desire to carry. It is true that the London and North-Western company do exchange some traffic with the petitioners at Morecambe, but this must be to a very small extent, although no doubt they would take that small traffic from the petitioners on to their own system.

The CHAIRMAN: However intimate may be the relations of the petitioners with the Midland railway, they do not in any way belong to the Midland, and have distinct interests of their own.

The *Locus Standi* of both Petitioners (1) and (2) is *Allowed*.

Agents for Petitioners (1) and (2), *Grahames, Currey & Spens*.

Petition of (3) THE STEAMSHIP OWNERS' ASSOCIATION AND THE IRISH STEAMSHIP ASSOCIATION.

Railway Company asking for Steamboat Powers—Steamship Owners' Associations claiming to Represent their Individual Members—Comprehensive Character of Associations—Absence of Allegations in Petition of Injury to Particular Shipowners, &c.—Competition—S. O. 156—[Railway Companies not to own Canals, Docks, Steam-vessels, &c.]—Discussion of Public Policy—Practice.

In addition to petitions (1) and (2), a joint petition was also presented against the bill by the Steamship Owners' association and the Irish Steamship association, also praying to be heard on the ground of competition. It was objected on behalf of the promoters that both associations consisted

largely of firms who did not own steamers trading between the ports named in the bill, or contiguous thereto, and who had no interest in the trade that would be accommodated by the promoters under the steamboat powers conferred upon them by the bill, and that the petition did not allege what members of the associations would be affected by the provisions of the bill, and further was largely directed to the question of the public policy involved in allowing railway companies to become owners of steam-vessels, which was a question for the House on second reading, and not for the Court or a Committee on the bill:

Held, following the decision in the *Glasgow and South-Western Railway (Steam-Vessels) Bill*, 1891, on the petition of the *Clyde Steamship Owners' Association and others* (Rickards & Saunders, 115) that, considering the composition of the petitioning associations, their interests as associations were not sufficiently affected by the limited powers conferred by the bill to entitle them to be heard against it.

The *locus standi* of the petitioners (3) was objected to on the following grounds: (1) the petition does not allege, nor is it the fact, that any land or property of the petitioners can be taken under the powers of the bill; (2) the bill does not contain any provision authorising any interference with any property, rights, or privileges of the petitioners; (3) of the services sought by the promoters to be sanctioned, one is between Fleetwood and Dublin, and another between Fleetwood and Liverpool, and the petition does not allege that the petitioners represent any steamship company or firm trading between Fleetwood and Dublin, or between Fleetwood and Liverpool, and therefore does not allege such a competition as would entitle them to be heard on their petition; (4) the allegations and statements in paragraphs 5 to 9 (both inclusive) and 11, even if well founded (which the promoters do not admit), are not such as, according to the practice of Parliament, entitle the petitioners to be heard against the bill; (5) as the petitioners do not allege that the companies or firms they represent trade between Fleetwood and Liverpool, they are not entitled to be heard against the bill on the allegation in paragraph 10 of their petition; (6) the petition does not allege or dis-

close any ground of objection which entitles the petitioners, according to the practice of Parliament, to be heard against the bill.

Pembroke Stephens, Q.C. (for petitioners 3)) : The petitioners are two associations representing numerous steamship companies, including owners of steamships engaged in the conveyance of passengers, cattle, and merchandise between England or Scotland and Ireland. The petition is signed by the secretaries of the two associations, and it alleges that the powers sought for by the bill will enable the promoters to set up competing lines, and therefore the associations are entitled to a *locus standi*.

Mr. SHIRESS WILL : Do you propose to show that our decision of last year in the *Glasgow and South-Western Bill*, 1891, on the petition of the *Clyde Steamship Owners' Association and others* (Rickards & Saunders, 115) was wrong?

Pembroke Stephens : No ; there was something special in that case, but up to that time in both Houses associations were heard just as much as individual traders, wherever it was shown that there was any possible interference with their traffic.

The CHAIRMAN : You must first show that any companies who are represented by these associations are affected, and then you must show that the associations have the right to represent them.

Pembroke Stephens : The City of Dublin company, besides being represented by the association, also appear on their separate petition, but the Drogheda company and the Dundalk company, both of whom go to Liverpool, are represented only by the association, and do not petition otherwise. I represent associations formed for the purpose of watching the interests of people who trade with these ports. The bill touches the whole question of cross-channel trade, and many of the interests represented by these associations are directly concerned in cross-channel traffic. These steamboat bills stand in a very special class, for S. O. 156 says that the Committee must specially report their reasons on which their decision is founded, if they decide that the bill should pass. The Committee cannot get the materials on which to form a judgment except when they have before them the representatives of the shipping interests, and these associations have, ever since their formation in 1849, been considered by Parliament the proper representatives of the shipping interests. (*Lancashire and Yorkshire and London and North-Western Railway Companies' Steamboats Bill*, 1870, 2 Clifford & Stephens, 59, *London and North-Western Railway Bill*, 1884, 3 Clifford & Rickards, 415,

and *Felixstowe Railway and Dock Bill*, 1886, Rickards & Michael, 100.)

The CHAIRMAN : The point is whether these associations are interested in this trade specially. The interests in the bill of many of the companies represented on them are very remote. The principle of our decision of last year was that we admitted those who were interested, but not those who might be members of the association who had nothing to do with the particular traffic in question.

Mr. SHIRESS WILL : What is the reason why the firms, whose traffic is threatened, do not petition individually ? It is, I suppose, because they want to avail themselves of the common purse of the associations.

Pembroke Stephens : No doubt, and the practice of this Court from 1847 until last year was to allow a *locus standi* both to the individual petitioner and also to the association. In some cases they were heard generally, and in others only on a particular point. One of the most recent cases was the *Cambrian Railway (Steamboats) Bill*, 1889, on the petition of these two *Steamship Owners' Associations and another Company* (Rickards & Michael, 243), and then these very associations were allowed a *locus standi*.

Mr. CHANDOS-LEIGH : There was a joint petition against the *Glasgow and South-Western (Steam-Vessels) Bill* of last year, signed by the *Clyde Steamship Owners' association* and several steamship owning companies and others, and we picked out those that did run between the competing ports covered by the bill, and allowed their *locus standi*.

Sir GEORGE RUSSELL : The decision of last year in the *Glasgow and South-Western* case appears to me to involve that in future a *locus standi* will only be allowed to those companies, members of the association, who are specifically affected.

Mr. SHIRESS WILL : No injury in that case would be done, because, assuming the association to have a purse, there is nothing to prevent them helping the individual members.

The CHAIRMAN : The decision of last year settled this point, that where an association petitions, jointly with a number of individual traders that association being a large one, we exclude the association and admit the individual traders actually interested.

Pembroke Stephens : That was not this case. The promoters then objected that the association had joined itself in petitioning with other individual firms and persons, who, having signed the petition, were the proper persons to be heard, and not the association. That is not the objection in this case, but it is that as the association does not allege that the companies

they represent trade between Fleetwood and Liverpool, they are not entitled to be heard against the bill.

Sir GEORGE RUSSELL: In effect it comes to this: Here is an association whose interests are in part affected by the particular bill, and in part not affected by it. Why should we let in the part not affected in opposition to this particular bill? Acting on that principle, you break up the association *quâ* association, and let in to oppose those members of the association who are interested.

Pembroke Stephens: That principle, if acted on, would destroy the principle of representation altogether, and would greatly multiply the number of petitions, and moreover, if such an objection was intended to be raised to the petition, it ought to have been raised in the most express terms in the objections to *locus standi*.

Mr. BONHAM-CARTER: Let me direct your attention to the *Edinburgh Municipal and Police Bill, 1891, on the petition of the Edinburgh and Leith Heritable Property Association, and others* (Rickards & Saunders, 99). It was there held that such petitioners as were themselves owners and occupiers of property affected were entitled to be heard, but the *locus standi* of the association, as such, was disallowed.

Pembroke Stephens: That was the case of people interested in property as distinguished from larger general interest in trade. In the *Glasgow and South-Western* case, decided last year, the *locus standi* of the Clyde Steamship Owners' association was disallowed because they represented a multiplicity of interests and businesses, very miscellaneous and wide in character. This is an association dealing with a particular class of trade, namely, shipping.

The CHAIRMAN: So it was last year.

Pembroke Stephens: But then there were people petitioning who could be identified as representing the particular trade, and therefore you could afford to distinguish, but if you disallow the *locus standi* of the association here, you will for the first time have interests which will not be represented at all.

Mr. SHIRES WILL: Is not the Steamship Owners' association composed of steamship owners trading all over the world?

Pembroke Stephens: Some of them may, but the bulk of them trade between England, Scotland and Ireland. It is because of the overbalancing power of railway companies, when opposed to individual steam companies, that for the last 30 years Parliament has allowed associations to be heard.

The CHAIRMAN: There is nothing to prevent a powerful association backing up its individual members who petition in their own names.

Pembroke Stephens: Proceeding in accordance with the practice, I have not got petitions from individual steamship companies. Therefore, if for the first time the decision of excluding an association is given, neither the associations nor the individuals will be heard.

Mr. CHANDOS-LEIGH: Why did not you do what was done last year, and put the names of these individual steamship companies in your petition?

Pembroke Stephens: The decision of last year was not one specifically dealing with these particular associations, whereas the decision of 1889 in the *Cambrian Railway Bill* was. We had no reason to suppose that there would be a departure by this Court from what was decided by this Court in 1889. There are two associations petitioning here, and I submit that if the Court cannot give them both a *locus standi*, it should give a *locus standi* to the smaller one, which is the Irish association.

Pope, Q.C. (for promoters): The petitioning associations represent the whole of the trade between Great Britain and Ireland, north and south, *e.g.*, between Bristol and Waterford, and a great many places not in Ireland at all. In order to give a *locus standi* there must not merely be a competitive interest, but it must be definitely alleged in the petition. It is impossible to frame a case against the associations on their petition, the competition of which they complain not being sufficiently alleged, and the allegations might refer to companies trading to Waterford, or Cork, or any other places. The companies which are members of the Steamship Owners' association, and run from Liverpool to Dublin and Belfast, are individually petitioning, and I admit their *locus standi*. I submit that the decision in the *Glasgow and South-Western Railway Bill* of last year ought to be followed, and that it is the duty of this Court to attend to the allegations of the parties interested in the provisions of the particular bill, and to see whether, by the provisions of such bill, some interest of some individual trader or class of traders would be affected and injured, not the interest of an association which contains a number of traders, some of whom would be affected and others not. If the petitioning associations exclusively represented the interests of steamship owners between Liverpool and Belfast and Liverpool and Dublin, or between the particular points of competition, it might be argued that the associations should have a *locus standi*; but in this case, if you grant to these associations, with their widely extended interests, a right to be heard as to the limited powers conferred by the bill, it will be allowing associations to

be heard, which as associations are not affected at all.

The CHAIRMAN: The petition very largely dwells on the question of general policy, which may be said to affect them in a sense, but not in a sense in which a *locus standi* is generally given.

Pope: The same issue was raised by the Clyde Steamship Owners' association in the *Glasgow and South-Western* case, and they were not allowed a *locus standi*. The general public policy is a matter to discuss on the second reading in the House, and is not a matter that can be gone into by this Court or by a Committee.

The CHAIRMAN: The *Locus Standi* of the Association is *Disallowed* on the ground that the interests of the associations as such are not sufficiently at stake to give them a *locus standi*, and that individual petitioners are going to be heard, and that other members of the associations might have been heard if they had thought fit to petition individually.

Agents for Petitioners, *Grahames, Currey & Spens*.

Agents for Bill, *Dyson & Co*.

LEA VALLEY DRAINAGE BILL.

Petition of THE LONDON COUNTY COUNCIL.

10th March, 1892.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Mr. COMPTON, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Constitution of Drainage Commission—Power to execute Works—Diversion and Widening of River—County Council—Drainage Area and Proposed Works outside County—Apprehended Injury to River in County—Existing Representation of Petitioners on Conservancy Board—Claim to Representation on Drainage Commission—S. O. 134B—[County Council Alleged to be Injuriouly Affected by Bill]—How far Petition must allege Injurious Affecting—Practice.

This was a bill to secure the drainage of lands in the valley of the River Lea (or Lee) with a view to the prevention of floods, and for that purpose it provided for the constitution of a body of Commissioners to be called "The Lee Valley Drainage Commissioners," with power, *inter alia*, to

divert and widen certain portions of the River Lea, and to execute other works specified in clause 25 of the bill, and to acquire land for that purpose; and (clause 31) general powers to cleanse, dredge and deepen the River Lea and certain of its tributaries; and (clause 37) to make bye-laws regulating the user of all drains and other works in the drainage district and the flow of water in the River Lea and its tributaries. A petition against the bill was presented by the London County Council, who, while they admitted that the whole of the drainage area dealt with and the works proposed by the bill were outside the county of London, alleged that the result of carrying out the powers of the bill by the Commissioners might be to affect the lower portion of the River Lea within the county. They contended that the management and preservation of any portion of the River Lea above London was a matter of such vital importance to the inhabitants of London, that they ought to be represented on the Commission proposed to be constituted by the bill. *Contra*, it was contended on behalf of the promoters that the bill could not affect the flow or purity of the river in its lower and navigable portions within the county of London, and that the powers of the Lea conservancy board, who had jurisdiction over the navigable portion of the river, upon which board the London County Council were represented, were fully preserved by the bill. An objection was taken by counsel for the promoters that the petition did not sufficiently allege that the county of London was injuriouly affected by the bill, as required by S. O. 134B, but this was overruled by the Court, who, under the discretionary power conferred upon it by that Standing Order, decided to allow the county council to be heard upon their petition against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege or show, nor is it the fact, that any land, house, property, right or

interest under the jurisdiction of the petitioners will be or can be taken or affected under the powers of the bill or in consequence of the execution thereof; (2) no part of the district affected by the bill is within the county of London, nor can the exercise of the powers of the bill so affect that county or the inhabitants thereof as to entitle the petitioners to be heard against the bill; (3) the flow of the waters in the River Lea is now subject to the control of the Lea conservancy board, and the granting to the promoters of the powers with respect thereto in the part of the old River Lea and its tributaries to which the bill relates will not affect or alter the position or rights of the petitioners; (4) the bill does not in any way affect the question of the purity of the water of the River Lea, and even if it did, the Lea conservancy board and not the petitioners are the parties entrusted with the management and preservation of the purity of that river; (5) the interests of the petitioners in the rivers and streams affected by the bill are too vague and remote to entitle the petitioners to be heard against the bill according to the practice of Parliament.

Cripps (parliamentary agent for petitioners): The River Lea constitutes, for a considerable part of its course, the eastern boundary of the county of London, and in part of its course it passes through the county of London. The Lea has long been a source of very great difficulty to the governing body of London, on account of its pollution by sewage and the fact that it is almost dry at times in the summer months. Only last year a special Act of Parliament was obtained for excluding the sewage of the Tottenham district, the effluent from which was previously discharged into the Lea from the river, and receiving that sewage into the main drainage system of London, so that it is obvious that the county of London is much interested in the Lea. The bill constitutes a Board of Commissioners with considerable powers. Under clause 25 they may execute works in the River Lea above the county of London, including the widening and diversion of the river and its tributaries, with general powers to cleanse, dredge, and deepen the river; and (clause 37) to regulate the flow of water in it and its tributaries; and, although the drainage area dealt with by the bill and the works proposed to be executed are actually outside the county of London, it is obvious that the purity and flow of the river in the county may be affected by the execution by the Commissioners of the powers of the bill, and the county council are entitled to be heard under S. O. 134B to protect the

interests of the inhabitants of London. We claim to be represented on the Drainage Commission constituted by the bill, in the same way that we already are by the action of Parliament represented on the Lea conservancy board, who have jurisdiction over the lower and navigable portions of the Lea, and this representation is the whole object of our petition.

Rigg (for promoters): The object of the bill is the prevention of floods in the Lea valley above London and beyond the jurisdiction of the petitioners. We shall improve the purity of the river in our district, and consequently of the portion of it which flows through the county of London, and we shall not affect the flow, as regards volume, of water in the river below us, except, perhaps, to make it more regular. We cannot, in fact, affect the flow of water in the lower and navigable portions of the river, as the weirs are under the control of the Lea conservancy board, upon whom the London County Council are already represented, and reasonably so, because portions of the river, which are under the control of the conservancy board, are within the county of London, whereas the whole of the portion dealt with and the works proposed by the bill are outside the county of London. Moreover, the petition does not comply with the requirements of S. O. 134B. That Standing Order is as follows:—"It shall be competent to the Referees on private bills to admit the petitioners, being the council of any administrative county or county borough, the whole or any part of which is alleged to be injuriously affected by a bill, to be heard against such bill if they think fit." The allegation in the petition is too vague to fulfil the requirements of that Standing Order being as follows:—"Your petitioners are advised that the works proposed by the bill, and the general powers to be conferred on the Commissioners may produce a considerable effect upon the water in the river, and your petitioners humbly submit that the inhabitants of London may be injuriously affected thereby."

Cripps: The word "may" was advisedly used, as it is not possible to estimate the exact effect of the proposed works on the river, before they are constructed. It is not even necessary to use the words "injuriously affected" at all (*Lambeth Water Bill*, 1883, on the petition of the Vestry of Lambeth (3 Clifford and Rickards, 292).

The CHAIRMAN: The Court accept the allegation of the petition as sufficient to satisfy S. O. 134B. They have not been very strict

about the words of the Standing Order being used in a petition. They prefer that they should be, but they have not distinctly said that they must be. The Court think that the London County Council are entitled to go to the Committee to ask for this representation, and therefore they *Allow the Locus Standi*.

Rigg: They must be confined to asking for representation.

Mr. SHIRESS WILL: They will be confined to their petition, which is directed to this matter.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Rees & Frere.*

LOCAL GOVERNMENT PROVISIONAL ORDER, No. 10 (HALIFAX ORDER), CONFIRMATION BILL.

Petition of THE CORPORATION OF BRADFORD.

13th June, 1892.—(*Before the Right Hon. LEONARD H. COURTNEY, Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Pember, Q.C. (for the undertakers): A clause mutually satisfactory to the corporation of Bradford and to the corporation of Halifax has been agreed, so the objections to the *locus standi* will be formally withdrawn, the corporation of Bradford being allowed to appear to see that the clause which has been agreed is put into the bill.

Balfour Browne, Q.C. (for the petitioners): The concession of the clause gives me a right to a *locus standi*, and the understanding is that I go before the Committee to see that the clause which has been conceded is put in.

Mr. CHANDOS-LEIGH: Would it be *locus standi* disallowed except against a particular clause?

Pember: It would be *locus standi* disallowed except against Article 3 and Article 21 of the Provisional Order, for the purpose of seeing to the insertion of the clause agreed and signed by myself on behalf of the corporation of Halifax and Mr. Balfour Browne on behalf of the corporation of Bradford.

Balfour Browne: I quite consent to that. Limited *Locus Standi* Allowed accordingly.

Agents for Petitioners, *Clabon & Parker.*

Agents for the Order, *Lewin & Co.*

LONDON COUNTY COUNCIL (GENERAL POWERS) BILL.

Petition of THE GAS LIGHT AND COKE COMPANY.

24th March, 1892.—(*Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.*)

Construction of Bridge by London County Council—Cost of Bridge to be partly borne by Local Rates of Parish and Partly by Improvement ("Betterment") Rate—Gas Company—Streets containing Gas Pipes within Limits of Deviation—Claim of Petitioners to be heard as Landowners—Easement—Alterations of Levels of Streets and Disturbance of Gas Pipes—Gas Company as Ratepayers—Increase of Local Rates—Improvement Rate on Lands, etc., within Prescribed Area—Bill Approved by Vestry—Representation.

Part II. of the bill (*inter alia*) empowered the London County Council to carry out certain street improvements, including the construction of a bridge, to be called the Cromwell-road bridge, for carrying the road across certain railways dividing the parishes of Kensington and Fulham, and the widening and improvement of a street called Sandy's-row in the central part of London. The petitioners were a gas company, whose pipes were laid in streets of which portions were included within the limits of deviation shown on the deposited plans for the construction of the Cromwell-road bridge, and they also had pipes laid in Sandy's-row. The promoters conceded them a limited *locus standi* as to interference with their gas pipes by the diversion or alteration of the levels of the streets; but the petitioners claimed to be occupiers of land in respect of these pipes, and as such to be entitled to be heard generally as landowners. Failing the establishment of this claim to be heard generally as landowners, the petitioners asked to be heard as ratepayers who would be subjected to increased taxation by the bill. Clause 6 of the bill provided that the cost of the Cromwell-road bridge should be borne partly by (1) the county rates, partly by (2) the

local rates of the parish of Fulham, and partly by (3) an improvement rate to be levied on "lands and buildings" in a prescribed area of Fulham. The petitioners were large ratepayers in Fulham, and they complained that they would be subjected to (2) additional local rates, and to (3) the special improvement rate levied on property within the prescribed area, within which some of their pipes were laid. The county council objected that as to (1) the increased county rate, the petitioners were represented by themselves; that as to (2) increased local rates, they were represented by the Fulham vestry, who had approved the bill; and that as to (3) the proposed improvement rate, the petitioners were not owners of "lands and buildings" within the prescribed area, and therefore would not be liable to the rate, which was, moreover, only leviable where the value of lands, &c., was improved by the construction of the proposed bridge, which could not be the case with a mere easement to lay pipes in the roads enjoyed by the petitioners:

Held, that the petitioners were entitled to be heard against Part II. of the bill, which provided for the construction of the proposed bridge and street improvements, and the levying of rates (including the improvement rate) for payment of the cost of the bridge.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the first ten pages of the petition purport to set out copies of the preamble and clauses of the bill; (2) the petitioners apparently claim a *locus standi* against the bill on the grounds (1) that lands and hereditaments belonging to them may be taken compulsorily; (2) that their pipes and mains may be interfered with; and (3) that they may be affected as ratepayers (in common with other ratepayers of the county of London) by charges imposed on the county rate; (3) the petitioners do not anywhere in the petition state where the mains, pipes and apparatus are situate which they allege may be interfered with, nor do they show which of the provisions of the bill authorise any such interference, but the promoters admit that the petitioners may be

heard against those specific provisions of the bill (if any) which would give powers of interference with their mains, pipes and apparatus; (4) the promoters deny that the bill contains any powers to take lands or houses of the petitioners; (5) the petitioners are not entitled as ratepayers to be heard against the London County Council, who represent them as well as all the other ratepayers of London; (6) except as aforesaid the petition does not disclose any ground of objection to the bill on which the petitioners are entitled, according to the practice of Parliament, to be heard on their petition against it.

Danckwerts (for petitioners): By clause 4 of Part II. of the bill (bridge and street improvements), the London County Council are empowered to make, among other works, a bridge called the Cromwell-road bridge across the West London and Metropolitan District railways and the sidings of two other railway companies. Apparently the streets now come up a certain distance towards the railways and there stop, and this is the same on both sides of the railways, and the promoters want to get a through communication by building a bridge. In doing that they take lands on both sides of the railways, and interfere with the streets by diversion and alteration of levels. We have gas mains in the streets which they propose to deal with in this way. In addition to that they propose by clause 6 of the bill to pay for this bridge by means partly of the county council funds to the extent of one-third of the cost, and as to one-third by means of rates levied by the vestry of the parish of Fulham, where we are large ratepayers, and as to the remaining one-third by an improvement rate levied on property in Fulham within a radius of half a mile of the western end of the bridge. We shall be affected by this improvement or betterment scheme, which is embodied in clause 7 of the bill. Under that scheme they take power to saddle £22,000, the cost of the bridge, on lands and properties within the half-mile radius of the western end of the bridge, within which area some of our pipes are laid. We pay 6 per cent. of the total rates levied in the parish of Fulham, upon which parish a liability of £42,000 in respect of the bridge and other improvements will be thrown, making us liable for £2,500. In addition to that they propose to levy a special improvement rate at 4 per cent. on the cost of the works within the half-mile radius, to be assessed in such proportions and on such occupiers as the county council may think fit and specify in an award. This improvement rate is to be collected with

other rates leviable by the overseers. Then there is another matter which is the Sandy's-row improvement, also authorised by clause 4 of the bill, this is partly within and partly without the City of London. There they propose to widen, raise and alter the level of the streets in the same way. The whole of that area, subject to the Sandy's-row improvement, contains our pipes. It has been held in the courts of law that a Gas company are the occupiers of the land in which their pipes are buried, to the extent to which the pipes occupy the soil, and they have a right of support for their pipes laterally as well as vertically. The Gas company have to pay for the privileges which they get in this way under the Gas Works Clauses Act, by being liable in damages to the owners beside them and beneath them, if their owners sustain and claim for any injury, and, on the other hand, they have a right of action for any disturbance of their pipes whether from taking away underneath support, or in any other way.

MR. CHANDOS-LEIGH: I understand the promoters do not object to your getting a *locus standi* to obtain protection for your pipes. They say, "The promoters admit that the petitioners may be heard against those specific provisions of the bill (if any) which would give powers of interference with their mains, pipes and apparatus."

Danckwerts: I am endeavouring to make out that I am entitled to more than a *locus standi* to obtain protection, that I have, in fact, the same rights as an occupier or owner of land has, to oppose the bill. It has been held in rating cases that both Gas and Water companies are occupiers of land in respect of their mains and pipes, and therefore rateable as such, and we are rated in this parish as ordinary occupiers. The legal position of a Gas company has been defined in a number of cases: *Reg. v. Cambridge Gas Company*, 8 Adolphus & Ellis, 73; *Reg. v. West Middlesex Waterworks Co.*, 1 Ellis & Ellis, 716; *Normanton Gas Co. v. Pope & Pearsons*, 52 L.J. Q.B.D. 629; and *Gas Light and Coke Co. v. The Vestry of St. Mary Abbott's, Kensington*, L.R. 15 Q.B.D. 1.

MR. SHREWS WILL: In order to make out a landowner's *locus standi* in this Court, it does not matter what your interest in the land is so long as it is an interest. It may be an interest as an owner, an occupier, or a reversioner, so long as it is an interest in land. You must, however, show us that you have an interest in land which is proposed to be dealt with under this bill.

Danckwerts: The cases I have referred to show an interest, and we have been served

with notice as landowners. It cannot be contended that we are represented by the London County Council, as we have not a single vote in their election, or that of any other local authority.

The CHAIRMAN: The promoters concede you a *locus standi* as to interference with your pipes.

Danckwerts: That is interference by altering the level of streets. We are, however, entitled to be heard as owners and occupiers on account of our property being scheduled, and also being subjected to increased rates. (*Cardiff Improvement Bill*, 1871, 2 Clifford & Stephens, 154; *Nottingham and Leen District Sewerage Bill*, 1872, *ib.* 291; *Pontefract Borough Extension Bill*, 1876, 1 Clifford & Rickards, 183; *Stalybridge Gas Transfer Bill*, 1885, Rickards & Michael, 70; and *Guildford Corporation Water Bill*, 1886, on the petition of Leighton and others, *ib.* 107.) We are entitled to be heard (1) as owners of property scheduled as being within the limits of deviation; (2) on account of interference with our pipes; (3) as subjected to additional rates in Fulham for the Cromwell-road bridge; (4) as being included in their improvement or betterment area, and subjected to an improvement rate; and we also claim to be heard in respect of an extension of time for taking land required for the construction of the Thames (Blackwall) tunnel, and the expending of more money in prosecuting enquiries with reference to London water supply; but I do not press so much for a *locus standi* to discuss these two latter points as I do on the other points.

Cripps (parliamentary agent for promoters): The petitioners are not owners of any lands or buildings proposed to be taken under the bill, although they have been served with notices as owners and occupiers *ex abundante cautela*.

The CHAIRMAN: The petitioners claim to be owners and occupiers of the land in which their pipes are laid, and to be rated for it.

Cripps: The fact is that there are certain streets within the limits of deviation in which pipes of the petitioners and other companies are laid, and we concede them a *locus standi* as regards interference with those pipes; but they have no other position as landowners. Clause 19 of the bill, dealing with cases in which it may be necessary to alter the position of any pipe, has been specially inserted for the protection of, and after consultation with Gas and Water companies, and gives such companies abundant protection and compensation if injured; but I am willing to concede a *locus* to the petitioners to discuss that clause.

Danckwerts: Clause 18 gives the council express power to appropriate the site of any street.

Cripps: So far as that would involve interference with the petitioners' property, they are protected by clause 19. (*Accrington Extension and Improvement Bill, 1882, on the petition of the Accrington Gas and Water-works Co., 3 Clifford & Rickards, 120.*) With regard to the improvement rate, the object of the bill is to authorise the construction of a direct means of communication over the railways dividing Fulham from Kensington by means of a bridge, which is to be paid for, as to one-third, out of the county rates, one-third out of the Fulham parish rates, and one-third by way of an improvement rate over a defined area, which area will be specially benefited by the construction of the bridge, and this scheme is approved by the vestry of Fulham, who represent the petitioners as ratepayers.

The CHAIRMAN: The petitioners contend that they will not be benefited by the bridge.

Cripps: Then the arbitrator to be appointed under clause 7, in case parties are not satisfied by the Provisional award of the Council, would not charge the property of the Gas company with any part of the improvement rate, which will only be levied on property improved in value by the bridge, and, as a matter of fact, they have no "lands or buildings" (in the words of the clause) in Fulham to be made chargeable to an improvement rate. The words of clause 7 are as follows: Sub-sect. (1): "There shall be a charge and rate to be called 'the Cromwell-road Bridge Improvement Charge,' and 'the Cromwell-road Bridge Improvement Rate,' which may be imposed, subject to the provision hereinafter set forth, upon all lands and buildings situate in the parish of Fulham and within a radius of half a mile of the western end of the bridge;" (2) "the Council shall, as soon as conveniently may be, but not later than three years after the completion of the bridge, cause to be framed a Provisional award, describing such of the lands and property situate in the said parish of Fulham and within such radius as aforesaid, as in the opinion of the council ought to bear and pay the said improvement charge and rate."

Mr. SHIRESS WILL: Sub-sect. 2 goes on to provide, "And the Council shall in such Provisional award state and specify—(a) the names of the owners, lessees, and occupiers of the lands and premises described in the said award respectively so far as they can be ascertained; (b) the proportionate amounts in capital sums, and by way of rate, which in the opinion of the council ought to be charged in respect of the said charge and

rate upon such lands and premises respectively." Occupiers of land would be liable to rates by reason of their occupation.

Cripps: The Gas company have no private lands, but only an easement in public lands, and the improvement rate would not touch them.

Mr. SHIRESS WILL: Then are they not entitled as ratepayers within the improvement area to go before the Committee to claim to be excluded from the operation of this clause?

Cripps: Not if they are not owners or occupiers of "lands and buildings" according to the words used in the clause. The improvement rate could only be charged on "lands and buildings," and when the improvement added a value to those "lands and buildings." How could the Gas company's right to lay pipes in the streets be improved in value by this bill?

Mr. SHIRESS WILL: I see clause 28 is as follows:—"It shall not be lawful for any corporation, company, or person to break up or interfere with the said new bridge for laying down any gas, water, or other main or pipe, or other work, except with the consent in writing of the Council." The effect of this bill would be to make the new bridge a highway within the meaning of the Metropolitan Acts, and but for that clause the Gas company would be entitled to cross it with their pipes.

Cripps: That is so, and although the bill takes away no existing right, as there is no existing road across the railways here, I should not press my objection to the petitioners' *locus standi* against that clause. The case really comes down to an extremely small matter. It is a question whether, because there are in streets which may be disturbed certain mains and pipes belonging to the Gas company, they are entitled to an unlimited *locus standi* as landowners, or whether, following the principle laid down by this Court in similar cases, they are only entitled to a limited *locus standi* against those provisions of the bill which may authorise any interference with their mains and pipes. I may refer the Court to the case of the *Tipton Local Board Bill, 1879* (2 Clifford and Rickards, 228). There it was held that the petitioners, who claimed a general *locus standi*, were only entitled to a *locus standi* against clauses for the purpose of preserving a proviso in their favour in a former Act of the promoters.

Mr. SHIRESS WILL: Was there an improvement rate there?

Cripps: No.

The CHAIRMAN: The *Locus Standi* is Allowed against Part II. of the Bill (Bridge, Street and

Improvement) and so much of the preamble as relates thereto.

Agents for Petitioners, *Wyatt & Co.*

Agents for Bill, *Dyson & Co.*

LONDON COUNTY COUNCIL (MONEY) BILL.

Petition of THE CORPORATION OF WEST HAM.

25th May, 1892.—(*Before Mr. PARKER, M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. SHIRESS WILL, Q.C., M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Money Bill—London County Council and Local Authority outside Metropolis—Allocation of Sums by Bill to Works already authorised—Interference with Roads, &c., by Works—Limit of Time for Construction imposed by the Metropolis Management Act, 1855, sect. 135—Metropolitan Board of Works (Loans) Act, 1869, sects. 38 and 50—Limitation of Capital Expenditure on Works removed by Bill—S. O. 134 [Municipal Authorities and Inhabitants of Towns]—Complaint against Existing Legislation.

This was a money bill presented by the London County Council, consolidating and amending their present powers of raising money, and regulating the expenditure and raising of money on capital account during the current financial period. Clause 62 of the bill empowered the council to raise and expend money for the different purposes named in the subsections of the clause, including a sum of money for the purposes of constructing works already authorised by the Main Drainage Acts. The petitioners, the West Ham corporation, objected to the bill on the ground that it would enable the county council to construct an additional outfall sewer through their district, involving interference with their roads and otherwise injuriously affecting the district, and argued that the capital powers conferred upon the promoters by the bill would have the effect of removing the limitation of the council's borrowing powers

imposed by sect. 38 of the Metropolitan Board of Works (Loans) Act, 1869, and thus enable them to carry out works in the West Ham district, which they could not otherwise do for want of the necessary funds. It was, however, admitted by the petitioners that the bill authorised no new works in their district, and that the works objected to by them were already sanctioned by the Metropolis Management Act, 1855, and it was pointed out by the Court that while the bill prescribed the amount to be raised and expended during the current financial period upon the various works enumerated in clause 62, no limitation had been imposed by previous Acts upon expenditure on works within the petitioners' district:

Held, that the complaint of the petitioners was against existing legislation, and that they were not entitled to be heard against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege, nor is it the fact, that any lands or property of the petitioners can be taken under the powers of the bill; (2) the petition appears to be based on the allegation that the bill will authorise the construction of a sewer or sewers in the borough of the petitioners. This is erroneous. The present bill is one of the series of annual bills limiting and regulating the amount of money to be raised and expended by the London County Council for purposes of capital expenditure, the method of creating and redeeming Metropolitan consolidated stock, and other incidental matters. It is not intended to confer, and does not confer any fresh powers of making works; (3) the matters referred to in paragraph 12 of the petition are irrelevant. The council are acting within their legal powers, and if not the petitioners have a remedy at law; (4) the use of the sewer to which the petitioners allude for sewage of places outside the county of London was expressly authorised by the Tottenham and Wood Green Sewerage Act, 1891, and other Acts; (5) the petitioners are merely complaining as to the operation of existing legislation; they are themselves negotiating with the London County Council as to the reception of the sewage of West Ham by the London County Council in the Metropolitan sewage system; (6) the petition does

not allege or disclose any right or interest, or any ground of objection which, according to the practice of Parliament, entitles the petitioners to be heard against the bill.

Balfour Browne, Q.C. (for petitioners): This is called a bill to consolidate and amend the Acts empowering the London County Council to raise money by the creation of Metropolitan consolidated stock, or borrowing, and to regulate the expenditure and raising of money on capital account during the current financial period. The effect of the bill upon West Ham will be to enable the London County Council to carry out further works, and to do further injury to the district. Under the Metropolitan Management Act, 1855, the Metropolitan Board of Works obtained important powers for the drainage of the metropolis, and for conveying sewage to Barking and Crossness. The outfall sewer to Barking is carried through the district of West Ham, in a high embankment of a most unsightly character, which passes under and alters the level of a number of roads. In 1855, when the outfall works were authorised, West Ham was a village with 18,000 inhabitants, but is now a borough with 250,000 inhabitants. The power to construct sewers was limited as to time, by sect. 135 of the Metropolitan Management Act, 1855, which provides that "such board (*i.e.* the Metropolitan board) shall make such sewers and works as they may think necessary for preventing all or any part of the sewage within the metropolis, from flowing or passing into the River Thames in or near the metropolis, and shall cause such sewers and works to be completed on or before the 31st day of December, 1860," with power however to make alterations and diversions of sewers from time to time after that date.

The CHAIRMAN: Of course, that is not only existing legislation, but accomplished fact.

Balfour Browne: From time to time, that limit of time was extended until 1869, when the Metropolitan Board of Works (Loans) Act, 1869, was passed, by sect. 50 of which the provisions named in the third schedule to the Act were repealed, and among them the limit of time for the completion of sewers, contained in sect. 135 of the principal Act of 1855, but in lieu thereof, a limit of amount of borrowing powers was imposed on the board. Sect. 38 is as follows: "The board shall not after the passing of this Act borrow, exclusively of any amount borrowed for the purposes of a loan to the managers of the Metropolitan asylum district, an amount which, together with the amount actually owing by them at the passing of this Act, after deducting the

market value at the date after the passing of this Act, of all sinking funds created in pursuance of any of the Acts mentioned in the first schedule to this Act, and remaining at that date in the hands of the board, exceeds in the whole ten million pounds sterling, actually received by them; provided that this shall not prevent the board from raising any money under the provisions of this Act for the purposes of paying off securities granted before the passing of this Act, and all moneys so raised shall be duly applied by the board accordingly."

The CHAIRMAN: That is not a limit upon the works affecting West Ham, but only upon the total expenditure of the board.

Balfour Browne: True, but their reason for coming to Parliament now is that they want to go beyond that £10,000,000 limits and to incur further expenditure in putting another pipe upon the embankment in West Ham. They have already got the land upon which to do this, and our only protection is that they are at present limited in amount; (5) by clause 62 of the bill it is proposed to authorise the council during the financial period to raise in accordance with the bill and on capital account for the purposes in the various sub-sections of the clause mentioned, such sums as they may think fit not exceeding the amounts therein-after mentioned in relation to such purposes, viz.: Sub-sect.—“(x) for the purposes of Main Drainage Acts, including sewers, precipitation works, machinery and appliances, and vessels or barges for the removal of sludge, £624,200.”

MR. CHANDOS-LEIGH: This is the first time a London money bill has been introduced as a private bill in this way. Up to last year it was introduced as a government bill, and went through as a matter of course.

Balfour Browne: As the bill stands, it is a money bill which will enable the Metropolitan board to do further injury to West Ham.

The CHAIRMAN: The only further injury they can do is under the old Act of 1855, and is therefore already authorised.

Balfour Browne: They cannot do further injury without additional money, for which this bill provides. We complain in our petition that we shall be injuriously affected by the bill by interference with our roads and so forth, and we ask to be heard under S. O. 134. Though it does not actually apply to this case, S. O. 134A shows that the raising of capital may amount to injurious affecting. It is as follows: "The municipal or other local authority of any town or district alleging in their petition that such town or district may be injuriously affected by the provisions of any bill relating

to the lighting or water supply thereof, or the raising of capital for any such purpose, shall be entitled to be heard against such bill."

MR HEALY: On the principle *expressio unius exclusio alterius*, S. O. 134A is against you.

SIR GEORGE RUSSELL: The petitioners are seeking to deprive the Metropolitan board of the means of giving effect to the Act of 1855.

THE CHAIRMAN: The *Locus Standi* of the Petitioners is Disallowed.

Freeman (for the London County Council) was not called upon.

Agent for the Petitioners, *Hillearys*.

Agents for the Bill, *Dyson & Co.*

LONDON COUNTY COUNCIL (SUBWAYS) BILL.

Petition of THE BOARD OF WORKS FOR THE
ST. GILES'S DISTRICT.

10th March, 1892.—(Before Mr. PARKER, M.P.,
Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.;
and Mr. BONHAM-CARTER.)

Subways, Existing and Future—Control by London County Council—District Board of Works as Road Authority under Metropolis Management Act, 1855—Power to compel Laying of Pipes and Wires in Subways—Bye-Laws—Approval by Board of Trade—Prohibition of Interference with Access to Subways—Liability for Accidents—Legal Rights of Petitioners as to Existing Subways not Affected—Power of Petitioners to oppose Construction of Future Subways in Parliament.

This was a bill for conferring further powers upon the London County Council with respect to subways vested in them as successors of the Metropolitan Board of Works, and such powers extended to future, as well as existing, subways. The petitioners were the board of works for one of the districts of the metropolis, and, as such, had the control of roads and sewers within their district, under the powers conferred upon them by the Metropolis Management Act, 1855. They claimed to be heard generally against the bill as in derogation of their powers and duties as a road authority, and especially against clause 10, which gave the county council power to make bye-laws

with reference to various matters connected with the subways, including the prohibition of any interference with any means of access to any subway, and against clause 11 of the bill, whereby the county council were exempted from all liability to compensation for damage caused by any pipe or wire placed in any subway. It was contended, on behalf of the promoters, that as to existing subways the petitioners had no right of access or other legal rights, which would be altered or taken away by the bill; and that as to future subways they could only be constructed by the council, by virtue of powers conferred by a special Act upon the council, and that it would be open to any board of works in whose district it might be proposed to make a subway to oppose the bill authorising its construction in Parliament. As regards clause 11, it was pointed out that it did not relieve companies using the subway from any existing liability, or make any alteration in the existing law with reference to such liability. On these grounds the Court, while expressing some doubt upon the matter, disallowed the *locus standi* of the petitioners.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the bill contains no powers affecting or concerning the petitioners; (2) the petition is apparently framed on a misapprehension of the effect and scope of the bill; (3) the petition discloses no right, nor have the petitioners any right according to the practice of Parliament, to be heard on their petition.

Baggallay (for petitioners): The bill confers on the London County Council further powers with respect to subways, including powers which will injuriously affect district boards and vestries in the exercise of the powers conferred upon them in relation to roads and sewers by the Metropolis Management Act, 1855, and the amending Acts. Clause 3 of the bill gives the county council power to compel any company to lay in the county council's subways all existing, altered, or new pipes and wires; and the expression company is defined (clause 2) to mean and include "any company, body, or persons, having any power of opening

or breaking up a street in the county except a vestry or district board of works, constituted and acting under the Metropolis Management Act, 1855, and the Acts amending the same." So far it might be argued that district boards are excluded from the operation of the bill, but clause 10 gives the council power to make and enforce bye-laws with respect to, amongst others, the following matters: "The position and manner in which pipes and wires shall be placed in subways, and the method in which they shall be brought into and taken out of subways. The manner in which any repairs or alterations in any such pipes and wires may be made; the control and regulation of persons resorting to any such subway, and all persons fixing or altering any pipe or wire; the prohibition of any interference with any means of access to any subway." It is clear that under such bye-laws the council might seriously interfere with our district board, and persons employed by them, more especially if our board became under the powers of the Electric Lighting Acts, 1882 and 1888, themselves the owners of electric wires. The subways must, of course, be under the streets, and we are the persons responsible for the control and management of the streets. As a matter of fact, the large number of the existing subways in London are in our district. The provisions of the bill are to apply to future as well as existing subways. If the bill passes we shall be prohibiting from interfering in any way with any access to a subway, however necessary it might be for the purpose of repairing the roadway under which the subway was laid. Then clause 11 is in our opinion most objectionable. It provides as follows: "Nothing in this Act or in any bye-law made under this Act, or any compliance with any of the provisions of this Act, or of any such bye-law shall relieve the company from any liability in respect of damage caused by any pipe, wire, or support, or attachment, or the failure thereof, or otherwise, due to any works or operations of the company, nor shall anything in this Act or any registration, supervision, or sanction effected or given in pursuance of this Act cause any liability to compensation for damage to be incurred by the council." I submit that the petitioners and the owners and occupiers of property in their district will, or may be seriously injured if, as is proposed by that clause, the council are to be entirely relieved from all liability to compensation for damage, while in effect, the council by the bill take on themselves full and unrestricted powers of control and management of the subways, and

of all pipes and other property placed in the subways.

The CHAIRMAN: You mean that the company could plead that they acted under the orders of the council and had no discretion, and the council could claim immunity under clause 11 of the bill from all liability.

Baggallay: Yes. On all these grounds I submit that the bill is objectionable and interferes with our powers and duties, and that we ought to be heard against it.

Cripps (parliamentary agent for promoters): This is a bill of general application throughout the county of London, and the petitioners alone, out of 40 local authorities, ask to be heard against it. The county council are the owners of the subways as successors of the Metropolitan Board of Works, and they only have any rights of access or otherwise in respect of the subways. The bill therefore does not interfere with any existing legal right or power possessed by the petitioners as a district board. The bill is one merely to define and regulate the relations between the companies (to the exclusion of vestries and district boards) who use the subways for their pipes and wires, and the council who owns them. With regard to the power of making bye-laws, it would be impossible to allow district boards to come and lay their sewers or wires in the subways without any regulations as to the conditions under which they might do so, and clause 10 provides that "no such bye-laws shall have any force or effect until they shall have been approved by the Board of Trade, who may prescribe what notices of the intended bye-laws should be given prior to their being taken into consideration."

The CHAIRMAN: Under that proviso the petitioners would be able to go before the Board of Trade and object to the proposed bye-laws.

Cripps: Undoubtedly. The position, therefore, is that the district boards have no powers or rights with regard to existing subways, and as to future subways, no single subway can be authorised except under the authority of a special Act of Parliament for the purpose; and, of course, the district board in whose district the proposed subway was to be made, would be entitled to be heard against the bill for the Act. With regard to clause 11 (as to liability for accidents) the effect of that is that all the existing liability to compensation for damage is reserved as against the companies, and is not imposed on the council. The petitioners would still sue the company and not the council as they would at the present time; so that the legal position is not affected. This

bill, it is clear, would not affect the *locus standi* of the petitioners against any future bill for the construction of a subway in their district, and they would also be entitled to discuss any powers to make bye-laws for its use or protection.

The CHAIRMAN: There is some doubt upon the question, but the Court have decided to *Disallow* the *Locus Standi*. They consider that, as regards the existing subways, the district board, who are petitioners, have shown no interference with any existing right of theirs which would entitle them to a *locus standi*; and that, as regards future subways the county council cannot construct them without coming to Parliament for a bill, upon which occasion any district board, through whose district it was proposed to lay a subway, would have an opportunity of arguing their *locus standi*; and they will not, we think, be prejudiced by this Act having been passed.

Agents for Petitioners, *Bircham & Co.*

Agents for Bill, *Dyson & Co.*

MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (EXTENSION TO LONDON, &c.) BILL.

Petition of W. G. CHAPMAN AND COMPANY.

17th March, 1892.—(Before Mr. PARKER, M.P., Chairman; Mr. COMPTON, M.P.; Mr. SHIRESS WILL, Q.C., M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Construction of Railway—Stopping-up of Streets—Obstruction of Access to Business Premises—Material Injury—Claim of Local Authority to represent Traders.

The bill empowered the promoters to construct their railway through a portion of the outskirts of the borough of Leicester, and in doing so to stop up certain streets. The petitioners were the owners of a manufactory situated in the extreme end of one portion of the borough, where they carried on the business of tanners and curriers. They alleged in their petition that it was essential to the success of their business that the boot and shoe manufacturers in the borough, whom they supplied with goods, should have free and direct access to their manufactory, and

alleged that the effect of closing the streets in question would be to leave them only one narrow and circuitous means of access to the borough. It was contended on behalf of the promoters that the proper parties, if any, to be heard on account of interference with streets were the corporation of Leicester, who were the road authority:

Held, however, that the petitioners had made out a sufficient case of *prima facie* injury arising from obstruction of access to their premises to entitle them to be heard against the bill, and that as traders they were not represented by the local authority.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege, nor is it the fact that the bill contains any provisions giving power to take any lands or other property of which the petitioners are owners, lessees, or occupiers; (2) the paragraphs of the petition, numbered 3 to 15 inclusive, the accuracy of which the promoters do not admit, are not such as to entitle the petitioners to be heard against the bill; (3) the petitioners are not entitled to be heard in respect of any apprehended injury arising from the powers contained in the bill; (4) the petition does not disclose any facts or circumstances which, according to the practice of Parliament, entitle the petitioners to be heard either against the preamble or the clauses of the bill.

J. D. Fitzgerald (for petitioners): A portion of the railway proposed to be authorised by the bill runs through the town of Leicester, and the bill empowers the promoters to stop up a number of streets. Three of these streets lead directly from the business premises of the petitioners, where they carry on business as tanners and curriers, which premises are situated at the extreme end of one portion of the borough of Leicester. The business mainly consists in supplying the boot and shoe manufacturers in Leicester with goods of various kinds, and it is essential for the successful and profitable conduct of the petitioners' business that they on the one hand should have easy access to all parts of the borough of Leicester, and that on the other hand the manufacturers who want to see their samples and goods should be able to get to the petitioners' manufactory without difficulty.

At present there are three streets by which Messrs. Chapman & Co. have easy access to those parts of Leicester where their customers carry on their business. First, there is Friars Causeway, on which the principal frontage of their premises is, which street leads up straight from the petitioners' premises to the borough of Leicester. The promoters propose to stop up that street. Then there is another street called Jewry Wall, which leads in a diagonal direction from the corner of their premises to the town of Leicester; which the promoters propose also to stop up. Then there is a third street, Talbot-lane, which leads in another direction, which the promoters also propose to stop up, so that their accesses to the borough of Leicester by those streets is entirely cut off. The remaining access would be a narrow street called Bath-lane, which would involve a long *detour*.

Mr. COMPTON: Do they propose absolutely to close these streets, and provide no other means of access?

Fitzgerald: Yes. In addition, their limits of deviation include half the width of another street, called Blackfriars-street, upon which the petitioners' premises have a considerable frontage.

Worsley Taylor, Q.C. (for promoters): We take no power by the bill to stop up, wholly or partially, the roadway in Blackfriars-street, and to interfere with a public highway requires an express provision in the bill, although possibly we might interfere temporarily with it for our works.

Mr. CHANDOS-LEIGH: In the case of the *Liverpool Corporation Bill*, 1886 (Rickards and Michael, 112), partial interference with access was held not to be sufficient to entitle the petitioner to be heard.

Fitzgerald: No doubt the interference must be a substantial one. In that case it only involved a *detour* of 25 yards. Here all access, except by a narrow and circuitous lane, is cut off. The petitioners, Messrs. Kershaw and Haines, were heard against the *Metropolitan, &c., Railway Companies Bill*, 1879 (2 Clifford and Rickards, 197), on the ground of a mere temporary obstruction of access to their warehouses. The Court has gone so far as to allow a villa proprietor a *locus standi* for loss of access to a common. (*London and South-Western Railway Bill*, 1883, on the petition of George Burton, 3 Clifford & Rickards, 313.)

Worsley Taylor (in reply): We have included half the roadway in Blackfriars-street within our limits of deviation because we take the houses on one side of the road, but we shall have no further powers over the road than the owners

have whose houses we take. There is in the petition no allegation of specific injury, *e.g.*, having to pay more for the cartage of coal or goods to the petitioners' manufactory on account of extra distance, or that his workmen would be affected by having to make a *detour* in coming to the manufactory from their dwellings.

Mr. SHIRESS WILL: There is a distinct allegation in paragraph 5 of the petition that the petitioners' customers, the boot and shoe manufacturers in Leicester, will be cut off from ready access to the petitioners' manufactory, which it is essential that they should have.

Worsley Taylor: Other manufacturers will be affected in the same way. They are all represented by the corporation as the road authority.

Mr. SHIRESS WILL: No local authority can represent traders in business matters.

Fitzgerald: The petitioners' manufactory is the only large one in this part of Leicester.

The CHAIRMAN: The Court think that the interference with the access is *prima facie* sufficiently serious to entitle the petitioners to a *locus standi*.

Locus Standi Allowed.

Agents for Petitioners, Kingsford, Dorman & Co.

Agents for Bill, Martin & Leslie.

MIDLAND RAILWAY BILL.

Petition of JAMES ADDY.

17th March, 1892.—(Before Mr. PARKER, M.P., Chairman; Mr. COMPTON, M.P.; Mr. SHIRESS WILL, Q.C., M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Widening of Railway carried over Road by Bridge—Interference with Light and Air—Injurious Affecting.

The bill, *inter alia*, authorised the promoters to widen their railway at a point where it was carried over a road by a bridge. The effect of the widening would be to bring the parapet of the bridge within a few feet of the windows of a building belonging to the petitioner, the ground floor of which was used as a shop and the upper floors as offices. The petitioner complained that the effect of widening the bridge would be to obstruct the access of

light and air to the building and diminish its value. The promoters contended that the practice of the Court was to disallow the *locus standi* of an owner complaining of the mere injurious affecting of his property :

Held, however, following the decision in the *South-Eastern Railway Bill*, 1876 (1 Clifford & Rickards, 258), that the petitioner was entitled to be heard on the ground of injury to his property by interference with light.

The *locus standi* of the petitioner was objected to on the following grounds: (1) the petitioner admits by his petition and it is a fact that the bill does not confer any powers for taking his lands or property or any part thereof, and the promoters deny that any property or rights of the petitioner are injuriously affected by the bill so as to entitle him to be heard against the same; (2) the promoters do not admit the accuracy of the statements contained in paragraph 5 of the petition, and they deny that the bill will have the effects or any of the effects alleged in paragraph 6 of the petition, but even if it would the petitioner would not on account thereof be entitled to be heard against the bill; (3) the bill confers no powers for altering the level of or interfering with the portion of the road in front of the petitioner's premises, which do not abut upon the portion of the said road proposed to be altered, and as regards the general question of interference with the said road the petitioner has no special interest therein entitling him to be heard thereon. The corporation of Sheffield who are the proper body to be heard upon that question have petitioned against the bill, and their *locus standi* is not objected to; (4) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioner is entitled to be heard against the bill.

J. D. Fitzgerald (for petitioner): The Midland railway company propose by the bill to widen their existing line, and to carry their widened line across a road in Sheffield called the London-road obliquely by a bridge. The petitioner is the owner of a block of buildings, the ground floors of which are let as offices and the upper portions as shops, situated at the corner of London-road, and the company might construct the bridge carrying the railway right up to the corner of one of those houses without taking it, and if the bridge

was a girder bridge, the girders of the bridge would be right in front of the windows of those offices and shops, which would result in a diminution of the light and air, and would create such noise, smoke and vibration, as to render those premises almost useless for the purposes for which they are now used, and by darkening the windows of the shops greatly depreciate their value. At the present moment there is a clear roadway of between 40 and 45 feet opposite the shops. If this widening is authorised, the railway will be within a few feet of the shops. The level of the roadway in front of the shops will also be lowered.

Bidder, Q.C. (for promoters): The deposited section shows that the road cannot be lowered more than about an inch opposite the petitioner's premises.

Fitzgerald: The substantial ground for a *locus standi* is the interference with my light.

The CHAIRMAN: As regards nuisance and noise from passing trains, the Court refused a *locus* on those grounds to the managers of the Metropolitan Asylum district, who petitioned against the *London and North-Western Railway Bill*, 1889 (Rickards & Michael, 263), on the ground of injury to one of their hospitals, by making a goods depôt close to the hospital.

Fitzgerald: The Court must in that case have thought the injury too inconsiderable. The *locus standi* of Messrs. Britten & Gibson was allowed against the *South-Eastern Railway Bill*, 1876 (1 Clifford & Rickards, 258), which authorised the widening of the promoter's railway, so as to bring it close to the petitioner's workshops for cutting and blowing glass, and I have a similar right to be heard on the same grounds against this bill. Where there is an interference with light there is an interference with property. There are two cases, decided last Session, also in favour of my being heard on the ground of injurious affecting, viz., the *Manchester, Sheffield, and Lincolnshire Railway (Extension to London) Bill*, 1891, on the petition of Owners, &c., in *Broadhurst Gardens, etc.* (Rickards & Saunders, 136), and on the petition of the Vicar and Churchwardens of the Parish Church of St. Mary, Leicester, *ib.*, p. 139.

Bidder, Q.C. (in reply): In the case of the last-named petitioner a *locus standi* was conceded, and therefore it cannot be relied on as a precedent. Although it is true that, technically speaking, our limits of deviation extend to within a few feet of the petitioner's property, we shall not, as a matter of fact, widen our bridge to that point, for it is obvious from the plan that we should not require so much

additional width, and equally obvious that we should not have a space between our existing bridge and another bridge made parallel to it to carry the additional rails. There is nothing in the petitioner's case to take it out of the ordinary rule laid down in such cases, viz., that the mere injurious affecting of property gives the owner no right to a *locus standi*. That point was decided in the following, among many other, cases: *Crystal Palace and South London Junction Railway Bill*, 1869, on the petition of the Trustees of Loughborough Park Chapel (1 Clifford & Stephens, 45); *Local Government Board Provisional Order (Plymouth) Confirmation Bill*, 1877 (2 Clifford & Rickards, 29); *Newport (Monmouthshire) Gas Bill*, 1877, *ib.* 48; *North British Railway (No. 2) Bill*, 1877, *ib.* 54; *Hull, Barnsley and West Riding Junction Railway and Dock Bill*, 1880, *ib.* 249; and *West Highland Railway Bill*, 1889 (Rickards & Michael, 313).

Mr. SHIRESS WILL: No doubt the precedents generally are in your favour. The question here is whether there is such an interference with light and air as would entitle the petitioner to compensation. Supposing anybody were to erect a bridge close to the petitioner's premises, as is proposed by the bill, without an Act of Parliament, would not the petitioner be entitled to claim an injunction?

Bidder: Possibly; but except in one or two exceptional cases the Court has not given a *locus standi* to an owner injuriously affected in this manner.

Fitzgerald: There can be no doubt about the interference with the light in this case, for at no point will the bridge be more than 8 feet from the nearest house.

Bidder: In the *South-Eastern Railway* case relied on for interference with light, the petitioners alleged that they had ancient lights, but no such allegations is made here.

The CHAIRMAN: The objections to *locus standi* do not raise that point. On the whole we have decided to allow the *locus standi* on the ground of injury by interference with light. *Locus Standi Allowed*.

Agents for Petitioner, *Durnford & Co.*

Agents for Bill, *Sherwood & Co.*

NEWCASTLE-UPON-TYNE IMPROVEMENT BILL.

Petition of THE WALKER LOCAL BOARD.

24th March, 1892.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Construction of Tramways by Municipal Corporation—Proposed Tramway in part outside Borough, and within District of Neighbouring Local Authority—Alleged Injurious Affecting of District—S. O. 134 [Municipal Authorities and Inhabitants of Towns]—Blocking of Road by Tramways—Interference with Access from Petitioners' District to Docks situate within the Borough under jurisdiction of Promoters—Alleged Injury to Trade—Corporation as Road Authority.

Clause 9 of the bill empowered the corporation of N. to construct certain tramways and among them tramway No. 9, two-thirds of which only would be laid within the borough of N., the remaining third being within the adjoining district of the local board of W. The local board of W. petitioned against this part of the bill, and claimed to be heard in respect of the whole of tramway No. 9. Their *locus standi* was conceded in respect of their objections to that portion of the tramway which would be laid within their own district, but they asked to be heard against the proposed construction of the whole of tramway No. 9 as a local authority alleging that their district would be injuriously affected by the bill under S. O. 134. In support of their contention, they alleged that the principal trade of their district consisted in the manufacture of large iron castings and works, which were conveyed in waggons along the road upon which it was proposed to construct tramway No. 9 for shipment at riverside quays within the borough of N., which road in fact formed the only access to the quays for heavy traffic from their district; and they alleged that the laying of the tramway along this road, which was a narrow one, would greatly incommode the conveyance of the iron castings, &c., to the quays, and as a

consequence seriously injure the trade of their district.

Contra, it was contended that the only way in which the road in question would be obstructed would be by the bringing of a certain amount of additional traffic upon it; and that the position of the road outside the district of the petitioners, in respect of which they were asking to be heard, was within the borough of N. and under the control of the corporation as the road authority within the borough:

Held, that under these circumstances the petitioners were not entitled to be heard as to the proposed construction of that part of tramway No. 9, which would be outside their own district.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege nor is it the fact that any lands of the petitioners can be compulsorily taken under the powers of the bill; (2) the promoters admit the right of the petitioners to be heard against such of the provisions of the bill as seek to authorise the construction of tramways in the district of the petitioners, but the promoters deny the right of the petitioners to be heard on their petition against any other provision in the bill; (3) the petition does not allege that the preamble of the bill is untrue or incapable of proof, except in so far as it relates to the construction of tramways in the district of Walker, and to that extent, but no further, the petitioners admit the right of the petitioners to be heard on their petition; (4) except as aforesaid, the petition does not allege or disclose any ground which entitles the petitioners, according to the practice of Parliament, to be heard on their petition against the bill.

Erskine Pollock, Q.C. (for petitioners): Clause 9 of Part III. of the bill (as to tramways) proposes to authorise the construction of two tramways, Nos. 9 and 10, as to which we ask to be heard. The promoters have agreed to strike out the whole of No. 10, two-thirds of which will be laid in our district, and they concede our *locus standi* as to that portion of No. 9 which will be in our district, but dispute our right to be heard against tramway No. 9 as a whole. We ask the Court under the special circumstances of the case, to exercise their discretion and to give us a *locus standi* against the whole of tramways Nos. 9 and 10 in the

bill, under S. O. 134, as the local authority of a town alleged to be injuriously affected by the bill.

Balfour Browne, Q.C. (for promoters): We have already come to an agreement with the petitioners to strike tramway No. 10 out of the bill, and I concede them a *locus standi* against the clause in the bill authorising that tramway to see that it is struck out, and also as to so much of tramway No. 9 as will be within their district.

Pollock: About one-third of tramway No. 9 will, if authorised, be constructed within our district, the part which is outside our district and which the promoters do not intend to strike out of the bill, should be either struck out altogether, or dealt with in a way which would remove our objection. Almost the whole of the industries of Walker consist in the construction of large boilers and propellers, and numerous other big works in iron, which are taken down to Newcastle to be fitted in steamers at the quays, and the only means of access to the Newcastle quays from Walker is by this road, on which it is proposed to lay this tramway No. 9, on which same road this very heavy traffic has to be carried.

Mr. CHANDOS-LEIGH: You say it would effect the district and the industries. Do any owners, lessees or occupiers petition against this tramway?

Pollock: No. We are the only persons who represent the interest of this road, and we allege that traffic would be seriously impeded if not entirely arrested if this tramway is constructed along this road. Anything which affects access is a matter of great importance, and this bill proposes so to change the access as to injuriously affect the traders, who instead of enjoying the use of this road in the way they have hitherto done, will henceforth enjoy it subject to the use of it by the tramways of the corporation.

The *CHAIRMAN*: Is not the traffic between the two places in a certain degree belonging to both places?

Pollock: The people of Newcastle do not send large iron constructions to Walker, whereas our trade for the most part consists in them, and this road is the only means of access, whereby we can take them to Newcastle. Interference with access is recognised in the Courts of law as ground for an action for damages. *Walker's Trustees v. Caledonian Railway Co.*, L.R. 9 App. Cas. 259.

Mr. SHIRRESS WILL: That case related to trade premises.

Pollock: It is as representing in our capacity of local authority the trade of Walker that we petition, and that trade will be greatly inter-

ferred with if this tramway No. 9 is made. The road along which it will be laid is a narrow one. There is nothing in the bill which provides for crossings at the narrow parts of the road, which is usually found in tramway bills, and if we are allowed a *locus standi* we should ask for this, so that our traffic might be carried with greater facility. The corporation of Newcastle, who promoted this tramway, are also the owners of the land on either side of the roadway for the whole distance, and therefore there can be no one to represent the interests of the frontagers upon it, and I submit that we who are the local authority are entitled under S. O. 134 to be heard.

The CHAIRMAN: I see from the plan that the remaining portion of tramway No. 9 is within the borough of Newcastle, that is to say, within the district of another road authority?

Pollock: That is so, but on that point I refer to the case of the *London and North-Western Railway Bill, 1889, on the petition of the Wallasey Local Board* (Rickards & Michael, 266).

The CHAIRMAN: In that case there was an entire destruction of access, whereas in this there is only a limitation of access.

Pollock: That is a question of merits, and where the Court is satisfied that there is an injury to access, it will not inquire into the amount of the injury.

The CHAIRMAN: Where we have to exercise a discretion we must look at the amount of injury.

Mr. SHIRESS WILL: Stopping up access is a very much stronger thing than partial interference by bringing new traffic upon the road.

Balfour Browne, Q.C., for the promoters, was not called upon to reply.

The CHAIRMAN: The *Locus Standi* is Disallowed except as against tramway No. 10, and so much of tramway No. 9 as is in the district of the Walker Local Board.

Agents for Petitioners, *Dumford & Co.*

Agents for Bill, *Dyson & Co.*

NORTH-EASTERN RAILWAY (HULL DOCKS) BILL. [H. L.]

Petition of (1) THE SOUTH YORKSHIRE COAL OWNERS ASSURANCE SOCIETY; AND (2) OWNERS OF WHARVES AND WAREHOUSES, AND OTHERS, AT KINGSTON-UPON-HULL.

AND

NORTH-EASTERN RAILWAY BILL.

Petition of THE SOUTH YORKSHIRE COAL OWNERS ASSURANCE SOCIETY.

13th June, 1892.—(Before Mr. PARKER, M.P., Chairman; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Railway and Docks Amalgamation—Assurance Society and Association of Coal-owners—Wharfingers and Warehouse-owners—Alleged Injurious Effect of Bill upon Existing Competition between Railway and Dock Companies—Injury to Trade of District—Railway and Dock Rates—Disturbance of Existing Relations between Traders and Railway and Dock Companies—S. O. 133A [Chambers of Commerce, &c., may be Heard in Relation to Rates and Fares] Discussed—S. O. 156 [Railway Company not to Acquire Canals, Docks, Steam-vessels, &c.]—Harbours, Docks and Piers Clauses Act, 1847, s. 30 (Power to Vary Rates).

The first bill, the North-Eastern railway (Hull Docks) Bill provided for the amalgamation of the undertaking of the dock company at Kingston-upon-Hull with the undertaking of the North-Eastern railway company; and the second bill, North-Eastern Railway Bill was for enabling the North-Eastern railway company to make a dock at Hull, and a new railway and other works in connection therewith. The company were under a contract with the corporation of Hull not to proceed with the second bill, if the first bill failed to receive the sanction of Parliament, and for purposes of *locus standi* the two bills were taken together as forming, in fact, parts of one scheme promoted by the North-Eastern railway company. Petitions upon similar grounds were presented against both bills by (1) an association of coalowners in the South Yorkshire district, formed for the protection of their common

interests, and among other purposes for that of opposing bills in Parliament injuriously affecting those interests. The petitioners alleged that so long as the Hull docks remained, as at the present time, in the hands of an independent company, an effective competition would continue to exist between the North-Eastern and the Hull docks company on the one hand, and the Hull, Barnsley, and West Riding railway junction and dock company on the other hand, to the great advantage of the coal trade and the reduction of rates in the district; but that the effect of the amalgamation proposed by the bill would be to kill that competition by placing the North-Eastern company, as owners of both the Hull docks and the railway forming the access thereto, in so powerful a position as to render the Hull, Barnsley, &c., company no longer able to compete with them; and that the result would be the financial ruin of the latter company; and following upon the discontinuance of the existing competition would be the raising of rates for the conveyance of coal throughout their district:

Held, that the amalgamation proposed by the bill might so materially alter the position of the petitioners with reference to the railway carriage of their coal trade as to entitle them to be heard against it. A petition against the *North-Eastern Railway (Hull Docks) Bill* was also presented by (2) certain owners of wharves and warehouses at Kingston-upon-Hull, who alleged that the effect of the bill would be to prejudice their business by the alteration of rates and other matters; but upon the *locus standi* of petitioners (1) being allowed by the Court, counsel for the promoters conceded the *locus standi* of these petitioners against the bill.

The *locus standi* of the petitioners (1) against the *North-Eastern Railway (Hull Docks) Bill* was objected to on the following grounds: (1) even if the petitioners sufficiently represent the coal-owners and coal trade of the South Yorkshire district (which the promoters do not admit), such trade and district are not affected

by the bill or by the other bill referred to in the petition, so as to entitle them to be heard against the bill, which is not a railway bill relating to the said district within the meaning of S. O. 133A; (2) it is not alleged in the petition, nor is it the fact, that the trade which the petitioners claim to represent is or will be injuriously affected by any rates or fares proposed to be authorised by the bills, or by the rates and fares already authorised by Acts relating to the railway undertaking, so as to entitle the petitioners to be heard against the bill under S. O. 133A; (3) the bill confers no new powers enabling the promoters to charge different rates to the petitioners for the conveyance of coal from the South Yorkshire district from those now chargeable, and in no way affects any competition which may exist between the South Yorkshire district and the West Yorkshire district, or any differential rates now charged or chargeable as between those districts. The whole question of railway rates has been fully dealt with in the present Session by the Committee on the *North-Eastern Railway (Rates and Charges) Provisional Order Bill*, and the petitioners are not entitled to be heard upon their petition against the bill in respect thereof; (4) the matters complained of in the petition are matters within the jurisdiction of the Railway and Canal Commission; (5) the promoters deny that the bill will have any such effect as alleged in paragraphs 6 and 9 of the petition; and, even if it would, the petitioners would not on such grounds be entitled to be heard against the bill; (6) the bill in no way affects the competitive route afforded by the Hull and Barnsley railway referred to in the petition; and even were it otherwise, the petitioners have no such interest therein or in the Hull and Barnsley railway as to entitle them to be heard against the bill; (7) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard against the bill.

The *locus standi* of the petitioners (2) against the *North-Eastern Railway (Hull Docks) Bill* was objected to on the following grounds: (1) the bill does not in any way affect any rights, usages, or privilege of the petitioners, or any of them as are referred to in paragraph 7 of the petition; (2) the matters complained of in paragraph 8 of the petition do not arise under the bill, and any such agreements as are referred to in that paragraph are not affected by the bill; (3) the promoters do not admit that the bill will have any such effect as is alleged in paragraphs 9 and 10 of the petition, and even were it otherwise the petitioners

would not on such grounds be entitled to be heard against the bill; (4) the promoters deny that any statutory rights of any of the petitioners are affected by the bill, or that any such new or further competition will arise or be created under the bill as to entitle the petitioners to be heard against the same; (5) as regards the dues on vessels referred to in paragraphs 12, 13, and 14 of the petition, it is not alleged in the petition, nor is it the fact that the petitioners or any of them are owners of or otherwise interested in vessels upon which such dues are leviable or are in any way chargeable with such dues, and even were it otherwise, the bill contains no provisions for altering or increasing such dues or imposing any new or increased dues on any vessels or otherwise prejudicial to the owners of or other persons interested in any such vessels; (6) it is not alleged in the petition, nor is it the fact, that the petitioners represent any trade or business in any district to which the bill relates or that any such trade or business is or will be injuriously affected by any rates or fares proposed to be authorised by the bill, or by any rates or fares already authorised by any Act relating to the railway undertaking so as to entitle the petitioners to be heard against the bill under S. O. 133A; (7) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard against the bill. The objections taken to the *locus standi* of (1) the South Yorkshire Coalowners Assurance society on their petition against the *North-Eastern Railway Bill* were the same as those taken to their *locus standi* against the *North-Eastern (Hull Docks) Bill*.

Balfour Browne, Q.C. (for petitioners (1)): The *North-Eastern Railway (Hull Docks) Bill* is a bill to authorise the North-Eastern company to acquire the Hull docks, which are now in the hands of an independent company, and the other bill introduced by the company simultaneously with that bill, and called simply the *North-Eastern Railway Bill*, is a bill to authorise the North-Eastern company to construct a new dock at Hull further down the Humber beyond the Alexandra dock of the Hull and Barnsley company, but unless the Hull docks are acquired the North-Eastern company is bound by a contract with the corporation and the dock company not to proceed with the railway bill for the construction of the new dock, and, therefore, these two bills hang together. The petitioners represent almost all the colliery proprietors in the South Yorkshire district, who are associated together under the name of the South Yorkshire

Coal Owners' Assurance society, for the protection of their common interests, and amongst other things, for the purpose of opposing bills in Parliament which injuriously affect them, and they allege that the result of these two bills will be to destroy a railway and dock competition which at present exists. They, therefore, petition and ask to be heard against both the bills, treating them in fact as one whole bill. The proposal of the *Hull Docks Bill* of the company is absolute purchase and amalgamation. The promoters become owners of the dock by this bill, and by the other bill they propose to make a new railway and a new dock. The present state of things is that the Hull docks belong to an independent company, and are in different hands to the railway company, *i.e.*, the North-Eastern company, whose railways form the access to those docks, and, moreover, there is a real and healthy competition between the North-Eastern company and the Hull docks on the one hand, and the Hull, Barnsley and West Riding Junction railway and dock company on the other.

Mr. CHANDOS-LEIGH: The Hull and Barnsley company was brought forward as an independent line for the purpose of destroying the monopoly of the North-Eastern company at Hull.

Balfour Browne: Yes; the result being that the rates from South Yorkshire were largely reduced. If, however, these Hull docks become the property of the North-Eastern company, the existing competition between the North-Eastern and the Hull and Barnsley companies will cease, because the Hull and Barnsley will be driven out of the field and unable to exist.

Mr. CHANDOS-LEIGH: Do the promoters deny that the petitions are a representative association?

Bidder, Q.C. (for promoters): I do not contend that the petitioners do not fairly represent the South Yorkshire coal trade, but I say that the people they represent are not a trade or business within the district to which this bill, or the other bill, relates within the meaning of S. O. 133A.

Balfour Browne: We do not ask to be heard under S. O. 133A. Our object is to prevent if possible this bill passing, because, if this bill passes, the competition that now exists will cease to exist and we shall be injured by the ceasing of the competition, and this will be brought about by the amalgamation of the dock company with the railway company. A recent case on this point was *The Bute Docks (Cardiff) Bill, 1889, on the petition of the Powell Duffryn Steam Coal Company and*

Freighters and others (Rickards & Michael, 236), and there it was not an actual amalgamation but a kind of working union between the Taff Vale and the Bute docks, so that the case for petitioners here is even stronger.

The CHAIRMAN: The Court there held that an alteration was effected by the bill in the relations between the two promoting companies which affected the traders, and you say that in this case there is an alteration effected by the bill in the relations between the North-Eastern company and the Hull docks company.

Balfour Browne: I cite also *The South Devon Railway Bill, 1854, on the petition of Traders and other Inhabitants of Plymouth* (1 Clifford & Rickards, 112), and would remind the Court of the provisions of S. O. 156.

Worsley Taylor, Q.C. (for petitioners (2)): I see that in *The Bute Docks* case which has been cited, the promoters conceded the *locus standi* of the freighters on the Taff Vale and the shippers at Bute docks (Rickards & Michael, p. 237), that case was precisely similar to that of the petitioners, whom I represent, and I therefore do not propose to address the Court at any rate before Mr. Bidder's reply.

Bidder (in reply): It is incumbent on petitioners even in amalgamation bills, where no doubt some favour is extended to them, to allege some ground of possible injury to their interests by the amalgamation bill itself, and this they have here failed to do. The *Bute Docks* case which has been cited was a totally different one from the present. There the petitioners, who were large colliery owners, claimed that they raised a large amount of coal, that they had interests in the Aberdare and the Rhymney Valley, that as regards the carriage of coal from Aberdare they were dependent on the Taff Vale, and as regards coal from the Rhymney Valley they were dependent on the Rhymney railway; and they said, that if the Bute dock passes into the hands of the Taff Vale, our coals carried to Cardiff by the Rhymney will be at a disadvantage at the Bute docks as compared with the coals brought by the Taff Vale company. The Taff Vale and the Rhymney companies were independent railway companies, both giving access to the Bute docks, and the Bute docks were independent of the two competing companies. This case is entirely different. The North-Eastern railway from South Yorkshire terminates for export purposes in the Hull docks. The Hull and Barnsley company have their own independent line from South Yorkshire and their own independent docks at Hull. The two are complete systems entirely distinct from

each other, and whatever competition there is, is between the North-Eastern plus the Hull docks, together making one route, against the Hull and Barnsley and their docks. The petitioners' grievance is that the North-Eastern company favour West Yorkshire at the expense of South Yorkshire coal trade, and maintain a differential rate, and that they do so at the present day notwithstanding the competition with the Hull and Barnsley, and they ask for a *locus standi* on the ground that if this bill is passed the North-Eastern company will be in a stronger position to maintain and increase the differential rate. This the North-Eastern company could do now. The petitioners do not, and could not, suggest that we could as owners of the docks make differential dock rates as between South Yorkshire and West Yorkshire, because that is absolutely prohibited by the Harbours, Docks and Piers Clauses Act, 1847, sect. 30, which is as follow: "The undertakers may from time to time vary the rates or any of them respectively in such manner as they think expedient, by reducing or raising the same, provided that the rates do not in any case exceed the amount authorised by the special Act to be taken, and provided also that the rates be at all times charged equally to all persons in respect of the same description of vessel and the same description of goods." There is absolutely no suggestion in the petition of any grievance to the petitioners arising out of this bill. They merely say that they are apprehensive that, if the promoters obtain possession of the docks, it will do away with the competition with the Hull and Barnsley company, which is at the present time an independent competing company. The Hull and Barnsley company cannot fall into the hands of the promoters without their first coming to Parliament, and that is the time for the petitioners to raise the allegation that their trade is damaged owing to the destruction of the competition, and the petitioners admit that they have no *locus standi* under S. O. 133a.

The CHAIRMAN: Parliament has been very jealous against these amalgamations on a large scale, and therefore this is a case where Parliament may reasonably be asked to look somewhat ahead to see whether it might not be too late hereafter to try and prevent a total monopoly.

Mr. CHANDOS-LEIGH: What the petitioners say, is that by a great company like the promoters acquiring the Hull dock it may possibly follow that you will drive the other line into a state of bankruptcy, which would destroy competition and be injurious to the traders of South Yorkshire.

Bidder: I have shown that it is absolutely prohibited to make differential dock dues, so that if there is to be any differential rate, it must be in the railway rate, and this rate we could put down if we wished at the present moment; and the suggestion that, possibly, I intend to lower the dock dues, in order to hurt the Hull and Barnsley company, is unfounded. Moreover, clause 25 of the bill has been specially framed to prevent that. Clause 25 is as follows:—"Any port or harbour authority or dock company which shall have reason to believe that the company is by its dock charges rebates allowances or by any charge whatsoever in connection with the docks of the company at Hull, placing their port, harbour, or dock, at an undue disadvantage as compared with the docks of the company at Hull, may make complaint thereof to the Railway and Canal Commission, who shall have the like jurisdiction to hear and determine the subject matter of such complaint as they have to hear and determine a complaint of a contravention of sect. 2 of the Railway and Canal Traffic Act, 1854, as amended by subsequent Acts." I submit that the petitioners have not shown any ground upon which they are entitled to be heard, and their real objection is to the maintenance of the differential rate which this bill in no way affects.

The CHAIRMAN: The Court consider that the Petitioners ought to be heard against this bill also against the *North-Eastern Railway Bill*, and the *Locus Standi* is therefore *Allowed*.

Bidder: I will concede the *locus standi* of owners of wharfs and warehouses and others at Kingston-upon-Hull, for whom my learned friend Mr. Worsley Taylor appears.

Locus Standi of Petitioners (1 and 2) *Allowed*.

Agents for Petitioners (1), *Webb & Co.*

Agents for Petitioners (2), *W. & W. M. Bell.*

Agents for the Bills, *Sherwood & Co., and Dyson & Co.*

PONTYPRIDD BURIAL BOARD BILL.

Petition of RATEPAYERS AND OTHERS WITHIN THE DISTRICT AFFECTED BY THE BILL.

20th June, 1892.—(Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH, Q.C. and Mr. BONHAM-CARTER.)

Constitution of Burial Board—Individual Inhabitants and Ratepayers—Representation—Collector of Rates within proposed Burial District—Alleged Alteration in Status and Remuneration—Poor Law Act, 1879, sect. 17 [Power to Remunerate Poor Rate Collectors for Collecting Rates in parts of Parishes]—Injurious Affecting—S. O. 134—[Municipal Authorities and Inhabitants of Towns].

This bill was for the constitution of a burial board, with limits coincident with those of the extended area of the Pontypridd local board, as proposed by the Glamorganshire county council in a Provisional Order now awaiting confirmation by Parliament. The proposed area would include within its limits the existing burial board district of Glyntaff, together with some adjoining districts, which had used the burial ground of Glyntaff, but were not parishes within the meaning of the Burial Acts, or entitled to meet in vestry. The petition, signed by ten persons who were ratepayers within the district affected by the bill, alleged that the proposed district would be the Pontypridd local government district, as the same was to be enlarged by an order of the Local Government Board, awaiting confirmation, whereas they contended that this district should be the burial board district provided for by the Burial Acts, a simpler arrangement and one suggested by the Secretary of State. One of the petitioners was a collector of poor rates, who objected to the bill, both as a ratepayer and as a collector within the district, and especially as it affected his remuneration, which was, under the bill, to be fixed by the burial board contrary, as he alleged, to sect. 17 of the Poor Law Act, 1879; and of the remaining petitioners, one owned

property both within and without the burial board district. It was objected on behalf of the promoters that the petitioners did not show that they were inhabitants of any district affected by the bill, and that they were as ratepayers not entitled to be heard; that the proper persons to be heard (if any) were: (1) the local board of Pontypridd; (2) the overseers; and (3) the vestry of the parish affected by the bill; that the collector was in no different position than that of other rate collectors affected by the bill; and that the single ratepayer, whose property would for the first time be brought within the burial district, could not in his individual capacity as a ratepayer be heard, according to practice. It was further pointed out by the Court that the petitioning rate collector only held office at will, and could refuse to act as collector if dissatisfied with the remuneration fixed by the burial board:

Held, that with regard to the petitioner, part of whose property would be under the bill brought within the burial district, as a single ratepayer he could not be heard; also that the petitioning rate collector, inasmuch as he did not petition as such, but merely signed a petition of individual ratepayers and inhabitants could not be heard; and that the whole number of petitioners being ten, they were not sufficient in number to represent the ratepayers and inhabitants of the district affected.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege or show that the petitioners are the inhabitants of any town or district injuriously affected by the bill, or that the Local Government district of Pontypridd referred to in the petition or any other district is, nor will any such district in fact be, injuriously affected by the bill; (2) the petition does not allege or show, nor is it the fact that any land, house, property, right or interest of the petitioners, or any of them will or can be taken or affected under the powers of the bill or in consequence of the execution thereof; (3) the petitioners, as individual ratepayers, have no sufficient right or interest to be heard against the bill, and they do not petition or claim to be

heard in any representative capacity whatever; (4) the proper persons or authority (if any) to be heard against the bill are (1) the local board of Pontypridd, or (2) the overseers of the poor as to any matter within or affecting their jurisdiction, rights or interests, or (3) the vestry of the parish or parishes affected by any provisions of the bill, but not the petitioners either individually or collectively; (5) the bill does not repeal or alter as alleged the provisions of sect. 17 of the Poor Law Act, 1879; (6) with respect to the amount of remuneration to be paid to the collectors, the petitioner, William Phillips, is in no different position from any other collector under the provisions of the bill, and in any case he has not now, and consequently is not deprived of, any personal right or share in fixing the amount of his remuneration; (7) the bill does not contain any provision affecting the petitioners or any of them; (8) the petition does not allege or show that the petitioners, or any of them, have, nor have they in fact, any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Rhys (solicitor to the petitioners, during the temporary absence of Cripps, Q.C., who appeared as counsel for the petitioners): The facts of the case are stated in the paragraphs 2 to 9 of the petition, as follows: (2) "The preamble recites amongst other things the constitution of a burial board, therein referred to as the Glyntaff burial board, who have provided a burial ground for the ecclesiastical district of Glyntaff in the parishes of Llanwrt, Hardre, Llanwonno, and Eglwysilan, in the county of Glamorgan; and further recites the expediency of extending the district, and that the district as so extended should be divided into wards for the election of members of such burial board, and that powers of levying contributions should be vested in the said burial board, and that the name should be changed to the Pontypridd burial board; (3) by clause 12 of the bill as amended in the House of Commons it is proposed to be enacted as follows:—'For the purposes of obtaining payment from the several wards of the sums to be contributed by them, the Pontypridd burial board shall issue their precept to the respective overseers of the parishes comprising such wards, requiring such overseers to pay, within a time limited by the precept, the amounts specified in such precepts respectively to the Pontypridd burial board, or to some person appointed by them, and such overseers shall respectively comply with the requisitions of such precepts by raising the contributions required within the respective wards in respect

of which the contribution shall be required by the levy of an addition to the poor rate or by a separate rate to be assessed, made, allowed, published, collected, and levied in the same manner as a poor rate. The officers ordinarily employed in the collection of the poor rate shall collect such addition to the poor rate or shall, if required by the overseers, collect any separate rate made under this section, and receive such remuneration thereof as the overseers, with the consent of the Pontypridd burial board, may determine; (4) The effect of the proposed extension of the district of the burial board will be to make that district co-extensive with the district of the Pontypridd local board, as the same is to be enlarged under an order of the Local Government Board now awaiting confirmation; (5) your petitioners submit that the bill is unnecessary and uncalled for, as it would be of greater public advantage that the enlarged local government district of Pontypridd should be constituted the burial board under the provisions of the Burial Acts, a simpler arrangement than that propounded by the bill, and such an one as is contemplated under the said Acts. Such an arrangement is suggested by the report of the Secretary of State for the Home Department now before your honourable House; (6) again, your petitioners, in view of prospective public legislation conferring enlarged powers on local authorities, consider the proposals of the bill premature; (7) especially do they object to the provisions of the aforesaid clause 12 of the bill, which will place the overseers and their officers, who are the servants of the ratepayers, and also the application of moneys of the ratepayers, under the control of the burial board, and thus deputing to a body representing other parishes a control with privileges and rights within your petitioners' parish, and hence over your petitioners, in opposition to the general law; (8) the procedure laid down by this clause is antagonistic to that of sect. 17 of the Poor Law Act, 1879, which gives certain rights to the vestry of a parish, but the operation of this clause will in effect override that section, and place in the hands of the burial board the rights now vested in the vestry. Such alteration will result in inconvenience, expense and delay to the overseers in conducting their office, especially as they will have to submit questions for consideration to the board, whose place and hours of meeting are quite distinct from theirs; (9) your petitioner, the undersigned William Phillips, who is collector of poor rates for the parish of Llanwonno, appointed by the guardians under an order of the Local Govern-

ment Board, objects also in his capacity of such collector, as well as a ratepayer, to the proposed departure from the usual and general mode of determining the amount of remuneration to be paid for services rendered in the collection of contributions in that parish, and particularly to its being necessary for the overseers to obtain the consent of the burial board to the amount of such remuneration. In his opinion such board are not in a position to appreciate the value of the services rendered in the collection, and he submits that there is no necessity, nor can any be shown to exist, for deviating from the general law by substituting the burial board for the vestry of the parish in determining such a question." The petition is signed by ten persons, and the petitioners do not claim to represent ratepayers collectively, but appear as individual inhabitants, who are ratepayers within the district, and one of the petitioners is a ratepayer both within and without the proposed burial board district.

The CHAIRMAN: How do you make out that you come within S. O. 134? "It shall be competent for the referees on private bills to admit the petitioners being the municipal or other authority having the local management of the Metropolis, or of any town, or the inhabitants of any town or district alleged to be injuriously affected by a bill, to be heard against such bill."

Rhys: The promoters admit in the preamble of the bill, as regards the portions of districts or parishes which will be left outside the burial area, that the inhabitants are not entitled to hold vestry meetings, and therefore for those portions of the districts affected which are left outside the area of the proposed burial district, no petitioners could appear in a representative capacity on behalf of the whole of the inhabitants of those outside districts; and therefore we are compelled by the nature of things to come only in our individual capacity.

Mr. CHANDOS-LEIGH: Do you say that you represent inhabitants of portions of parishes which are excluded?

Rhys: In the case of one petitioner that is so, because I represent, amongst others, one ratepayer at present entirely outside the burial board district; some of his property will be within the proposed burial district and some outside, and according to the preamble he would not be entitled to call a vestry meeting in respect of that particular property outside the proposed district, but he will be injuriously affected in this way, that he or his tenant will have to pay a rate which at present is not assessed upon his property brought within the

burial district, and the proposed boundaries of the burial district will leave his property partly within and partly without the burial district.

The CHAIRMAN: This Court is not in the habit of admitting single persons who are no more affected than he appears to be, to be heard under the name of inhabitants.

Mr. CHANDOS-LEIGH: Can you refer us to any case at all which shows that you are a sufficient body of ratepayers representing the district to justify you in presenting the petition?

Rhys: I have no authority upon that, but as to one of the petitioners, he is directly interested beyond his position as a ratepayer—he is at present assistant overseer, and as such, the person who has to collect the rates, and he is the only overseer within the district, and he signs the petition, though he may not have done so in his capacity as overseer.

Mr. CHANDOS-LEIGH: Then we must treat him as an inhabitant.

Rhys: I respectfully submit that this petitioner, William Phillips by name, who in the petition alleges that he is a collector of poor rates for the parish of Llanwonno, appointed by the guardians under an order of the Local Government Board, is entitled to be heard as being pecuniarily affected by the bill. He objects in his capacity of collector, as well as ratepayer, to the proposed departure from the usual mode of determining the amount of remuneration to be paid for services rendered in the collection of contributions in that parish, and to its being necessary for the overseers to obtain the consent of the burial board to the amount of such remuneration. At present his remuneration is determined in the manner provided by sect. 17 of the Poor Law Act, 1879, which is as follows: "Where a rate is levied by the overseers of a parish over part of the parish only, the officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect such first-mentioned rate, and shall receive out of the same such remuneration for the additional duty as the overseers, with the consent of the vestry, may determine." The position of the petitioner will be altered by the bill, because instead of being practically at the mercy of the vestry as to his remuneration, it is proposed by the bill to put him under the jurisdiction of the burial board. I submit that the Court has discretion to give a *locus standi* if, in the opinion of the Court, a person is pecuniarily affected.

Cripps, Q.C. (who here entered the room): I admit that an individual ratepayer would not be entitled to be heard if there was any repre-

sentative body, and the only question is whether there is any representative body here.

The CHAIRMAN: Do the cases show that an individual ratepayer may be heard where there is no representative body?

Cripps: I cannot find any case against that. Then there is another petitioner, William Phillips, on whom the bill purposes to place a special statutory obligation on terms with which he is dissatisfied.

The CHAIRMAN: His remuneration for services as collector is now fixed by the overseers, and the bill makes the consent of another body also necessary, but he need not collect the rates unless he is satisfied with the remuneration.

Cripps: I submit that when an additional statutory obligation is going to be placed upon him, he is entitled to be heard.

Pembroke Stephens, Q.C., for the promoters, was not called upon.

The CHAIRMAN: The *Locus Standi* is Disallowed.

Agents for the Petitioners, Rees & Frere.

Agents for the Bill, Toor & Co.

REGENT'S CANAL, CITY AND DOCKS RAILWAY.

Petition of (1) THE CORPORATION OF WEST HAM.
13th June, 1892.—(Before Mr. PARKER, M.P.,
Chairman; Mr. HEALY, M.P.; and the Hon. E.
CHANDOS-LEIGH, Q.C.)

Railway—Extension of Time for Compulsory Purchase of Lands—Corporation having become Purchasers of Land since Original Act conferring Compulsory Powers—Claim to Landowners Locus Standi—Purchase how far Bonâ fide—Local Government Enquiry relating to Lands—Suppression of facts as to Lands at Enquiry—Question for Committee on Bill.

The bill, *inter alia*, provided for extending the period for the compulsory purchase of lands, the original powers of purchase having been obtained in an Act of 1882. The corporation of West Ham had recently become the purchasers of a portion of these lands for the formation of a public park within their borough. A Local Government Board enquiry had been held in the borough with reference to an application by the corporation for the sanction of the Board to their raising the necessary money for

the purchase of the lands in question. At this enquiry (of which the promoters were unaware), no mention had been made of the fact that the lands in question were subject to the compulsory powers of purchase conferred by the Act of 1882, and it was under these circumstances that the Local Government Board had authorised the corporation to raise the necessary money for the purchase of the land. The promoters objected that, under such circumstances, the corporation were not entitled to be heard against the extension of time proposed by the bill, as *bonâ fide* landowners :

Held, however, that as there had been a conveyance of the land to the corporation, and the purchase had been completed, the corporation were entitled to be heard as landowners, and that it was for the Committee on the bill to take into consideration the circumstances of the Local Government Board enquiry, in connection with the purchase of the land.

The *locus standi* of the petitioners (1) was objected to on the following grounds: (1) there is no sufficient allegation in the petition that the county borough of West Ham, of which the petitioners are the council, or any part of that borough is injuriously affected by the bill, nor is that borough or any part thereof in fact injuriously affected by the bill; (2) the promoters deny the allegation contained in the sixth paragraph of the petition that the petitioners have purchased the land referred to in that paragraph; (3) if the petitioners have in fact purchased such lands the purchase has only recently been made, and has been made with the full knowledge of the petitioners that the promoters of the bill have compulsory powers of purchasing the land and are seeking by the bill to extend the time for such compulsory purchase, and the petitioners have no right by reason of such purchase to object to the proposed extension of time; (4) the petitioners are not entitled, according to the practice of Parliament, to set up a possible diversion of the authorised railway as suggested in paragraph 18 of the petition; (5) in paragraph 19 of the petition the petitioners are in effect complaining of bygone legislation, and since the Act of 1890 referred to in that paragraph, no such alteration of circumstances has

occurred as justifies the petitioners in asking that the provisions inserted in that Act for their protection should be varied; (6) the bill in no way modifies or affects the provisions of sect. 45 of the West Ham Corporation (Improvements) Act, 1888, referred to in the twentieth paragraph of the section, and the petitioners will have after the passing of the bill all the same rights and powers with respect to the approaches, accesses, gates, fences and steps referred to in that paragraph as they now have under the said sect. 45. If it be true that the construction of railway No. 3 will interfere with or damage the said approaches, fences, gates, steps, &c., and prevent access by the public to the embankment surface referred to in that paragraph, precisely the same result would have followed from the construction of the railway if it had been constructed under the powers of the promoters' existing Act at the time when the said sect. 45 was enacted, and the petitioners have no right, according to the practice of Parliament, to raise upon the present bill the question which they raise by the said twentieth paragraph of the petition; (7) in paragraph 21 of the petition the petitioners in effect complain of bygone legislation. No such circumstances have occurred since the passing of the Act of 1890, referred to in that paragraph, as justifies the petitioners in asking that by the present bill the provisions of sect. 7 of the last-mentioned Act should be varied; (8) the bill does not contain any provision affecting the petitioners; (9) the petition does not allege or show that the petitioners have, nor have they in fact any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Balfour Browne, Q.C. (for petitioners): The original bill for the construction of *The Regent's Canal, City and Dock Railway* was passed in 1882, by which the company obtained powers which expire in August, 1893, and they now seek to obtain an extension of time for a period of three years. The town of West Ham has increased very rapidly in the last ten years, and it now possesses 250,000 inhabitants, and the land available for public purposes is limited, and believing that this railway will never be made, we have purchased for the price of £13,000 some land through which the railway passes for the purpose of a park and recreation ground. We were not allowed in the other House a *locus standi* because we had not then completed the purchase. This we have since done and it is now our land, and we say that these powers should no longer be continued, and that it would seriously injure this district to have the railway running through it, and

we set up in our petition an alternative scheme.

Rees (parliamentary agent for the promoters): I object to a deviation being set up. This cannot be done according to parliamentary practice.

Balfour Browne: You can set up an alternative scheme if it is sufficiently set up in the petition, but that is a matter for the Committee on the bill.

Mr. HEALY: Has any notice to treat been served on your predecessors?

Balfour Browne: No, nothing has been done since 1882. We are now the absolute landowners, and we have the right to say that the promoters shall not have any more powers over our land beyond August, 1893.

The *CHAIRMAN*: You would have had a *locus standi* against this extension of time in the House of Lords had you been a landowner soon enough.

Balfour Browne: Clearly. It was admitted that the then owner had a *locus standi* and therefore our *locus standi* was objected to, and we are now the only owners of the land, and I submit we have an undoubted *locus standi*.

Rees: I must put you to proof that you have purchased the land. If you establish your right as a landowner you are entitled to be heard, according to the practice of the Court. It may turn out that this is not a *bonâ fide* out and out purchase but only a conditional one.

The *CHAIRMAN*: If the petitioners show that it is an absolutely complete purchase and in no sense a contingent purchase, they acquire the right of a landowner as regards appearing, but the promoters are entitled to press them to be quite accurate upon that point.

Rees: I do not concede that the petitioners would have an unqualified landowners' *locus*.

The promoters here called *Mr. Hilleary*, the town clerk, who acted as the solicitor to the corporation of West Ham in the purchase of the land, and his managing clerk, who proved that there was an absolute conveyance of the land, the purchase money having been paid and the purchase completed. It appeared, however, from *Mr. Hilleary's* evidence, that upon the corporation applying to the Local Government Board to allow them to raise the money for the purchase, a local enquiry had been held by the Board in West Ham (of which no notice had been given to the promoters), and that the fact that the compulsory powers of purchase by the railway company over the land in question existed was not brought to the attention of the inspector of the Board who held the local enquiry.

Mr. HEALY: I presume there would be no question that the user of this bit of land by the railway would practically render it useless for a park.

Balfour Browne: It would seriously injure it, and be a serious detriment to it as a park.

Rees (in reply): I submit that the petitioners have not a right to a *locus standi* under the peculiar circumstances of the case. The land which we obtained compulsory powers over for the purposes of our railway in 1882, was at that time an open field, and we could purchase it on ordinary terms, but the petitioners by purchasing the land under the Public Health Act for the purpose of a public park entirely alter our position. If matters had remained as they were, the owner of the ground could only have opposed as an owner of fields, but the petitioners by purchasing the land are able now to say that we are going to spoil a public park, and I submit that the case in which you would allow a landowner purchasing after notice of an extension of time bill to appear as representing the *solum* would be a case in which the circumstances affecting the *solum* remained unchanged. I also submit that the suppression of the fact at the Local Government enquiry that the land was under compulsory powers of purchase should preclude the petitioners from being considered as *bonâ fide* owners of this land. If the inspector had been aware of that his report to the Board might have been different, and the Board might have refused to allow the corporation to raise the necessary money for the purchase of the land.

Mr. HEALY: Have you any case to refer us to upon this point?

Rees: I am not aware of any. The question here is whether people coming even in good faith to purchase land whilst compulsory powers are already existing, and whilst an application for an extension of time is actually pending, causing an entirely new state of things by that purchase, are entitled to come before the Committee and put themselves practically in a much higher position than the original landowner.

Mr. CHANDOS-LEIGH: I must say I do not think that the West Ham corporation have got really much case upon merits. What I feel is this, that at the time they came to get the consent of the Local Government Board, notice ought to have expressly been given to the Local Government Board, that this very land was under compulsory powers.

Mr. HEALY: I quite agree in that. My difficulty with regard to taking any action in respect of, I will not say the suppression, but

the non-communication of that fact to the Local Government Board is this, that no matter in what way the consent of the Local Government Board has been obtained, it has been obtained, and the conveyances have been completed, and the money has been paid, and I know of no way in which the transaction could be rescinded.

The CHAIRMAN: I think the fact that the land was subject to compulsory powers should have been stated to the Local Government Board; on the other hand, I think if the company had been wide-awake, and intending immediately to make their railway, they ought to have been warned by the local notices.

Rees: We are not landowners within the parish, and we could not be expected to see the notices in the local newspapers, because we do not take them in; and we should have had no *locus standi* at the local enquiry.

The CHAIRMAN: The *Locus Standi* is Allowed. Of course the Committee will look carefully into the circumstances that will be brought before them.

Agent for Petitioners, Hilleary.

Petition of (2) THE VESTRY OF ST. PANCRAS.

Extension of Time for Construction of Railway and Canal—Local Authority of District through which Railway was to be made—Provision in Original Act for Reconstruction by Promoters of Bridge over Canal in Petitioners' District—Injurious Affecting of District, by delay in Reconstruction of Bridge—S. O. 134 [Municipal Authorities and Inhabitants of Towns].

The extension of time for the construction of railways proposed by the bill was also objected to by the vestry of St. Pancras, whose district was intersected by a portion of the railways and canals belonging to the promoters. Sect. 139 of the Regent's Canal, City and Dock Railway Act, 1882, had provided for the reconstruction to the satisfaction of the vestry of a bridge which carried a road called the King's-road, situate within the district of the vestry, over the Regent's canal, and in certain events for the reconstruction of other bridges across the canal. The petitioners complained that the proposed extension of time would further postpone

the reconstruction of the said bridges by the promoters in accordance with sect. 139 of the Act of 1882, and would otherwise injuriously affect their district within the meaning of S. O. 134:

Held, that the petitioners were entitled to be heard against the proposed extension of time, under that Standing Order.

The *locus standi* of the petitioners (2) was objected to on the following grounds: (1) the petitioners are not entitled to object to the extension of time proposed by the bill, all questions between the promoters and the petitioners, including the matters referred to in paragraphs 3, 5, and 7 of the petition having been settled and determined by sect. 139 of the Regent's Canal, City and Dock Railway Act, 1882, which section was inserted at the instance of, and for the protection of the petitioners, and is still in force; (2) the fact that the ratable value of land within the parish of St. Pancras has been, or may be, injuriously affected for the reason alleged in paragraph 6 of the petition does not, according to the practice of Parliament, entitle the petitioners to be heard against the proposed extension of time; (3) as regards paragraph 8 of the petition the petitioners have no right to be heard in respect of any such injury to the parish as is alleged in paragraph 8 of the petition, even if the allegation of such injury were well founded, which the promoters deny; (4) as regards paragraph 9 of the petition, sect. 139 of the Act of 1882 therein referred to, is in no way affected by the bill, and will remain obligatory upon the promoters if the bill be passed; (5) in paragraph 10 of the petition the petitioners are in effect complaining of bygone legislation, and there is nothing in the bill which in any way affects the matters referred to in that paragraph; (6) the bill does not contain any provision affecting the petitioners; (7) the petition does not allege or show that the petitioners have, nor have they in fact any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Castle, Q.C. (for petitioners (2)): This is a bill for extension of time, and I submit that the petitioners, who are the vestry of St Pancras, are entitled to be heard on two grounds; first, if this extension of time is granted the time will be enlarged within which the promoters are bound to rebuild a certain bridge, called King's bridge, by an agreement entered into with the vestry in 1882. When the Regent's

canal was constructed, the roads were carried over it by very inconvenient bridges, amongst them being King's bridge, over which a vast amount of traffic now passes; with reference to this bridge, a clause was inserted by agreement in the Regent's Canal, City and Dock Act, 1882, to the following effect: Sect. 139. "The company shall to the satisfaction of the vestry reconstruct the bridge which carries King's road over the canal to the widths, and according to the lines shown on a plan signed by the engineer to the promoters and the chief surveyor of the vestry. In the event of the company at any future time reconstructing or substantially altering the structure of the bridges which carries Regent's Park-road, Kentish Town-road, Camden-road and Great College-street, respectively over the canal, the company shall reconstruct such bridges to the widths and according to the lines shown on a plan signed by the engineer of the company and the chief surveyor of the vestry."

Rees (parliamentary agent for promoters): No time was mentioned in that clause.

Castle: If that clause was necessary ten years ago, it is still more necessary now, as to the fact that no time is mentioned, that argument was disposed of in the case of the *Great Northern Railway (Various Powers) Bill*, 1885 (Rickards & Michael 27). Looking at sect. 139, I submit that it was the intention of the parties that this bridge should be built within the five or six years that were allowed in 1882 for the completion of the works.

The CHAIRMAN: That might a little strengthen your case, but it is nearly the same if you have been hung up all this time under the arrangement under which the bridge was to be rebuilt, and then the company come asking Parliament to lengthen the time.

Castle: They obtained their bill in 1882; they asked for an extension of time in 1887, and again in 1890, and they now seek to extend the time to 1896. The promoters say that all matters we now complain of were settled and determined by sect. 139.

The CHAIRMAN: I think the obvious answer to that is that it is settled for a limited time.

Castle: In support of my contention that time is an element in these contracts, I cite the case of the *East and West Junction Railway Bill*, 1871 (2 Clifford & Stephens, 141), and I submit that we ought to be heard against this proposed extension of time. The second ground on which I claim a *locus standi* is that the effect of the extension of time would be to retard the development of St. Pancras by preventing us from improving the bridges over the

canal, which the increased traffic necessitates.

With reference to this point we allege in paragraph 10 of our petition as follows: (10) "The bridges carrying certain of the public highways of the parish over the canal are insufficient for the traffic, but your petitioners are unable to alter these bridges should they so desire without the consent of the company, and the company as a condition of giving their consent insist on your petitioners widening the waterway of the canal under the bridge and constructing the bridge of a corresponding length. This extra cost it is as your petitioners submit unfair they should be put to, and they humbly submit that provisions should be inserted in the bill enabling your petitioner to adapt the bridges to the requirements of the traffic without being subjected to this burthen." We believe that this new railway will never be made, and we claim, under S. O. 134, to be heard as the local authority whose district is affected by the bill. I cite in my favour the case of the *London and South-Western and Metropolitan District Railway Companies Bill*, 1884, on the petition of the *Surbiton Improvement Commissioners* (3 Clifford & Rickards, 422).

Mr. HEALY: Your case appears to be a good deal stronger, for the Commissioners were simply a public body through whose district the railway passed.

Mr. CHANDOS-LEIGH: The petitioners are a local body and allege that they are injuriously affected by the bill, and object thereto, and under S. O. 134 we can give them a *locus standi* if we think right, against this extension of time bill.

Rees (in reply): The material words of S. O. 134 are "alleged to be injuriously affected by a bill to be heard against such bill if they shall think fit." The petitioners cannot here show anything in the bill that affects them, and it is essential that they should do this, it is not enough that they should merely say in the petition they are injuriously affected by the bill.

Mr. HEALY: They not only say they are injuriously affected, but they go further and say how they are injuriously affected.

Rees: But they do not say they are injuriously affected by the bill; what they want is something introduced into the bill.

The CHAIRMAN: They say they object to the extension of time for the further reason that it will defer the reconstruction of the said bridges.

Rees: The petitioners might have endeavoured to get some protection for these bridges in 1882, but they did not do so. This extension of time will not alter our powers or their rights,

and they cannot now ask for anything which is not within the four corners of the bill.

The CHAIRMAN: An extension of time is practically a re-enactment of all these clauses, and the petitioners also allege that they cannot alter certain bridges without the promoters' consent.

Rees: The promoters would, I submit, have to come to Parliament for any alteration of these bridges; such powers could not be given to them by this bill. The case of the *Great Northern Railway Company* cited by the promoters was decided on a totally different point, and the other case cited, that of *The London and South-Western and Metropolitan District Railway Companies*, was entirely under S. O. 134, under which it must be shown that there is something in the bill itself that injuriously affects the local authority, which the petitioners in this case do not show. *Regent's Canal, City and Docks Railway Bill, 1887, on the petition of Commissioners of Sewers (City of London)* (Rickards & Michael, 107).

Mr. CHANDOS-LEIGH: In the case of the London & South-Western and Metropolitan District railway the bill was for an extension of time for the construction of a railway and compulsory purchase of land. The railway passed through the district of the Commissioners, and they alleged that the proposed extension of time would prejudicially affect their district by postponing the carrying out of certain street improvements. In the present case the corporation say that this bill will have the effect of postponing certain bridges improvements, and to hinder the growth and development of the district.

Rees: I submit that the allegation in the petition, so far as it relates to these bridges, is not sufficient to entitle the petitioners to a *locus standi*, the difficulty as to these bridges having nothing to do with the present bill, which is merely for an extension of time.

The CHAIRMAN: Suppose we do not give a *locus standi* against the extension of time on this point, why are we not to give it upon the rest of the petition?

Rees: With reference to the point made by the promoters as to sect. 139 of the Act of 1882, all these matters were dealt with and settled by the agreement embodied in that section.

The CHAIRMAN: All matters in dispute between them ten years ago.

Rees: They are the same now, and we do not interfere with, or in any way modify, that section; there is no time limited within which these works are to be done.

Mr. HEALY: That section is affected just as much as the rest of the Act by the extension of time.

The CHAIRMAN: The *Locus Standi* of the Petitioners is *Allowed*.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Rees & Frere.*

SAINT BARNABAS CHURCH LIVERPOOL BILL. [H. L.]

Petition of INHABITANTS OF THE ECCLESIASTICAL DISTRICT OF ST. BARNABAS.

13th June, 1892. — (*Before the Right Hon. LEONARD H. COURTNEY, Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Sale and Removal of Church—Petition of Non-Resident Members of Congregation — One Petitioner only Resident in Ecclesiastical District—Authority to Represent Congregation and Officers of Church—Insufficiency of Representation.

The bill authorised the sale and removal of a church. The petition was signed by eleven persons, members of the congregation, but not residing, with one exception, in the ecclesiastical district assigned to the church. One of the petitioners, not being himself a resident in the ecclesiastical district, appeared in support of the petition and claimed a *locus standi* against the bill as representing a committee, which included the sidesmen of the church, annually elected to assist the vicar of the church in matters connected with the church and the management of the parish. It appeared, however, that this committee had not been appointed or authorised to represent the congregation of the church in opposing the bill, and that, as a matter of fact, only six out of a total of sixteen or seventeen members of the committee had signed the petition, the remainder of the signatories to it being sidesmen of the church; and the Court declined to receive the petition as that of a committee entitled to represent the congregation. As an

additional ground for being heard against the bill, the petitioner who appeared in person to support the *locus standi* of the persons signing the petition, produced a written authority from the churchwardens of the church to oppose the bill, but the Court decided that neither this petitioner nor the other petitioners, who did not reside within the ecclesiastical district assigned to the church, had any right to appear on behalf of the inhabitants of that district; and that the only petitioner whose claim to be heard was worthy of consideration was the one petitioner resident in the ecclesiastical district:

Held, however, that, as a single individual, he was under the circumstances of the case not entitled to be heard to represent the interests of the members of the congregation objecting to the removal of the church.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition is signed only by eleven persons, none of whom, with the exception of J. C. Norcliffe, are inhabitants of the ecclesiastical district of St. Barnabas; (2) the petitioners do not claim to represent, nor do they in fact represent, nor are they entitled to represent, the inhabitants of the said district (either under S. O. 134 or otherwise), or the congregation of St. Barnabas church, and the promoters deny that the promotion of the bill is against the wishes of a large majority, or, in fact, of any considerable portion of the inhabitants or congregation; (3) it does not appear from the petition that any of the petitioners attend the church of St. Barnabas, or have any interest therein which will be in any way affected by the bill, so as to entitle them to be heard against the same; (4) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners, or any of them, are entitled to be heard against the bill.

Thomas Park, one of the petitioners, appearing in person: I am a member of the congregation of St. Barnabas, the sale and removal of which is authorised by the bill, and am one of the school managers, and one of a committee for assisting the vicar in church matters, which committee comprise the sidesmen of the church; and I produce an authority from the churchwardens empowering me to appear here on their behalf. The authority is in the following terms: To the honourable the Commons of the

United Kingdom of Great Britain and Ireland, in Parliament assembled. "We, the churchwardens of St. Barnabas church, in the parish of Liverpool, do hereby appoint and authorise Thomas Park, of 15, Chaloner-street, Liverpool, and J. C. Norcliffe, of 23, Great George-place, Liverpool, to vote for, and represent, us in opposing the bill now in Parliament for removing the said church.—John Saunders, warden; James Miller, churchwarden. June 11th, 1892." There is a petition to the House, not praying to be heard, on the same grounds, signed by over 400 persons, but this petition is signed by a committee of eleven persons. For some years past there has been an average attendance at the church of 200 persons.

Pembroke Stephens, Q.C. (for petitioners): Only one of the petitioners is a resident in the district of St. Barnabas.

Park: The committeemen are appointed by the congregation at the ordinary Easter vestry, and the committee is elected for the conduct of church business.

MR. CHANDOS-LEIGH: The petition is signed by six committeemen and five sidesmen. How many does the committee consist of?

Park: Sixteen or seventeen. I will call one of the churchwardens who is here.

J. C. Norcliffe (examined by Thomas Park): I am one of the petitioners, and live in the district. I am an ex-churchwarden, and a member of the church committee. All the petitioners, although non-resident in the district, regularly attend the church. The committee are chosen from the congregation by the minister and churchwardens, and assist the minister.

The CHAIRMAN: The weakness of the case is that only one of the petitioners resides in the district.

Pembroke Stephens: They are not a committee for opposing this bill, but merely a consultative body to discuss church matters with the vicar, and they have no legal status. Mr. Norcliffe cannot, as one individual, claim to represent the inhabitants of St. Barnabas church district.

MR. CHANDOS-LEIGH: In some cases not connected with church matters individuals have been heard, as for example, against the *Basingstoke Gas Bill*, 1887 (Rickards & Michael, 137).

Pembroke Stephens: The petitioner was there the chairman of a committee of ratepayers and consumers who were specially appointed to oppose the bill. Mr. Norcliffe does not represent any committee appointed in a similar way to oppose this bill, but is one of a consultative committee who have nothing to do with this bill.

Mr. BONHAM-CARTER; Was there any meeting of this committee at which it was resolved to oppose this bill?

Pembroke Stephens: No. The only meeting was one at which a majority, including the churchwardens, and the whole of the residents in the district present, voted in favour of the bill, and the non-resident minority, who are the petitioners, voted against it.

The CHAIRMAN: Then the question is whether the one resident petitioner, who is a sidesman of the church, has a right to appear. The Court is of opinion that he has not sufficient representative authority to be heard.

Locus Standi Disallowed.

Agents for Bill, *Sherwood & Co.*

SWINTON AND PENDLEBURY LOCAL BOARD BILL.

Petition of (1) THE CORPORATION OF SALFORD.

25th May, 1892.—(Before Mr. PARKER, M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Sir GEORGE RUSSELL, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Agreement by Petitioners embodied in Act of previous Session, not to oppose Bill if containing certain Provisions—Bill introduced by Promoters accordingly in first House—Alteration of Provisions by House of Lords—Claim of Petitioners to be heard against Bill as Altered—Alleged Breach of Agreement by Petitioners—Practice.

The promoters of the bill had themselves opposed a bill promoted in the previous Session by the petitioners, the corporation of Salford, but had withdrawn their opposition to the bill on an undertaking being given by the corporation that they (the corporation) would not oppose a bill introduced within two years by the promoters of the present bill to enable the taker to acquire compulsorily certain portions of the gas undertaking of the corporation. This undertaking had been embodied in a section of the Act obtained by the corporation in the previous Session, and in accordance with it the promoters of the present bill had introduced it into Parliament in the first instance in the form

agreed to with the corporation, but the Committee of the House of Lords to whom the bill had been referred, had considerably modified and amended it. The corporation now claimed to be heard against the bill as amended by the House of Lords, but were met by the objection that they were estopped by their agreement with the promoters of the previous Session. That agreement, so far as the promoters of the present bill were concerned, had been to "apply to Parliament" for a bill on the lines of their agreement with the corporation, and the promoters contended that they had strictly carried out their part of the agreement by the introduction of the present bill in its original form, and pointed out that they were in no way responsible for the alterations made in the bill by the Committee of the House of Lords, and had in fact strongly objected thereto:

Held, however, that as the bill was no longer in the form to which the petitioners had agreed not to object and as it proposed to deprive the petitioners of part of their district of gas supply, they were entitled to be heard against it.

The *locus standi* of the petitioners was objected to on the following grounds: (1) by sect. 2 of the Local Government Provisional Orders Confirmation (No. 14) Act, 1891 (hereinafter called the Act of 1891) it is, *inter alia*, enacted as follows: "If at any time within two years from the passing of this Act the local board for the district of Swinton and Pendlebury and the local board for the district of Barton, Eccles, Winton and Monton, in the County of Lancaster (hereinafter in this section called 'the local boards') jointly, or either of such boards separately shall apply to Parliament for power to supply the said districts and the other districts within the limits of gas supply of the mayor, aldermen, and burgesses of the borough of Salford (in this section referred to as the corporation), except the borough of Salford and the township of Prestwich with gas, and to purchase such portion of the gas undertaking of the corporation as is situate within such districts then it shall not be lawful for the corporation to oppose such application, except in so far as may be necessary in order to secure the

insertion in any Act of clauses to protect their interests with respect to such purchase;” (b) the said sect. 2 of the Act of 1891, was inserted in the bill for that Act by agreement between the corporation and the Swinton board and the Barton, Eccles, Winton, and Monton local board (hereinafter called “the Barton board”), and in consideration thereof the Swinton board and the Barton board withdrew from all opposition to the bill for the Act of 1891; (c) the bill as originally introduced into Parliament sought power to enable the Swinton board to supply their district, and the districts of Barton, Eccles, Winton, and Monton, and the other districts within the limits of gas supply of the corporation, except the borough of Salford and the township of Prestwich, with gas and to purchase such portion of the gas undertaking of the corporation as is situate within such districts; (d) the bill was opposed before the committee of the House of Lords by the corporation and other opponents; (e) the *locus standi* of the corporation was objected to before the Lords Committee and disallowed; (f) the bill was passed by the Lords Committee in its present shape, and was by them restricted against the will of the Swinton board to the Swinton portion only of the existing gas undertaking of the corporation; (g) the corporation having received the consideration for their agreement to the said sect. 2 of the Act of 1891, and the bill having been promoted by the Swinton board, in compliance with the terms of that section, the corporation are not entitled to be heard against the preamble of the bill; (2) the construction by the Swinton board of the proposed new works, and the raising and expenditure of capital therefor, and the illuminating power of the gas to be supplied by them are matters which do not affect the corporation and with which they have no concern, and they are not entitled to be heard against the bill in regard to any of them; (3) the petitioners have not, and their petition does not allege or show that they have any such interest in the objects of the bill as, according to the practice of Parliament, entitles them to be heard against it on any of the grounds specified in their petition except in so far as may be necessary in order to ensure the insertion in the bill of clauses to protect their interest with respect to the proposed purchase.

Balfour Browne, Q.C. (for petitioners (1)) : The petitioners, the corporation of Salford, are at the present time the gas authority, not only in their own borough, but in several outside districts also, including that of the local boards of Swinton and Pendlebury. Last year (1891)

the corporation came to Parliament for the confirmation of a Provisional Order, and then made an agreement with the local board of Swinton and Pendlebury and the local board for the district of Barton, Eccles, Winton, and Monton, which agreement is embodied in sect. 2 of the *Local Government Board's Provisional Orders Confirmation (No. 14) Bill*, 1891, and is as follows:—“If at any time within two years from the passing of this Act the local board for the district of Swinton and Pendlebury, and the local board for the district of Barton, Eccles, Winton, and Monton, in the county of Lancaster (hereinafter in this section called ‘the local boards’) jointly or either of such boards separately shall apply to Parliament for power to supply the said district, and the other districts within the limits of gas supply of the mayor, aldermen, and burgesses of the borough of Salford (in this section referred to as ‘the corporation’), except the borough of Salford and the township of Prestwich, with gas, and to purchase such portion of the gas undertaking of the corporation as is situate within such districts, then it shall not be lawful for the corporation to oppose such application except in so far as may be necessary in order to secure the insertion in any Act of clauses to protect their interests with respect to such purchase, and if such powers of purchase be granted the corporation shall sell and the local boards shall purchase such portion of the gas undertaking of the corporation within the said districts at such price as shall in default of agreement be fixed by arbitration under the provisions of the *Lands Clauses Act*.” The Court will observe that the agreement contained in that section only amounts to an agreement not to oppose a bill for acquiring the whole of the districts supplied by the corporation with gas other than the borough of Salford and the township of Prestwich, whereas this bill as it now stands merely empowers the local board of Swinton and Pendlebury to acquire so much of the gas undertaking of the corporation as lies within their district, which would deprive the corporation of a remunerative portion of their district of supply, and leave them saddled with an obligation to supply the sparsely populated and unremunerative portions. We could not oppose in the House of Lords because the bill as there introduced was for the acquisition by the promoters of the whole of our gas district outside Salford and Prestwich. The bill as it comes before this House is an entirely different bill, and not within the agreement embodied in sect. 2 of the Order of last year. It is true that the

alteration was made by the Committee of the House of Lords, to whom the bill was referred, but it none the less takes the bill out of the operation of the agreement of last year, and we are entitled to be heard against it in the form in which it is introduced into this House.

Bidder, Q.C. (for promoters): The petitioners are stopped by the agreement in sect. 2 of the Order of 1891 from opposing the bill. We have strictly performed our part of that agreement, viz., to apply to Parliament, either jointly with the local board of Eccles or without their co-operation, for powers to supply the districts outside Salford and Prestwich now supplied with gas by the corporation, we therefore ask you to insist upon the corporation fulfilling their part of the agreement by not opposing us in Parliament. The bill has no doubt been altered from the form in which it was introduced by us in the House of Lords, but without any collusion on our part and against our wish.

Mr. SHIRESS WILL: You are not obliged to proceed with the bill in its present form. The petitioners can rightly say that this is not the bill they agree not to oppose.

Bidder: Then they ought in the first instance to have guarded against any alteration in the bill by either House of Parliament by adding a proviso to sect. 2 of the Order of 1891 dealing with such a contingency.

The CHAIRMAN: The *Locus Standi* of the petitioners is *Allowed*.

Agents for Petitioners, *Dyson & Co.*

Petition of (2) THE LOCAL BOARD OF LITTLE HULTON.

Gas—Abstraction of Part of District of Supply—Purchase of Mains used for Supply of Local Board District—Necessity of Laying New Mains by Circuitous Route—Increased Expense of Supply—Apprehended Raising of Gas Rates to Consumers.

A *locus standi* against the bill was also claimed by the local board of Little Hulton, between whose district and the borough of Salford the district of Swinton and Pendlebury intervened, on the ground that if the promoters purchased the mains in their own district, as they were by the bill authorised to do, they would be purchasing the mains through which the district of the petitioners also received its

supply of gas from the corporation of Salford, and it would be necessary for the corporation to lay new mains by a circuitous route for the supply of the petitioners' district, to meet the expense of which the corporation would impose the maximum authorised gas rate instead of, as at present, supplying the petitioners' district at a rate considerably below the maximum. The promoters contended that the question of supply by new mains was one for the corporation of Salford, and not for the consumers in the petitioners' district:

Held, however, that the petitioners were entitled to be heard against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) (a) the acquisition by the promoters of the mains, pipes, and effects mentioned in clause 7, sub-clause 3 of the bill will not cut off the petitioners' district from the gasworks of the Salford corporation, and if it would it would not confer on the petitioners the right to be heard against the bill; (b) none of such mains, pipes, and effects belong to the petitioners, but to the Salford corporation, and if they are acquired by the promoters the Salford corporation will receive full compensation for them, and if any new pipes or mains are necessary to secure the continuance of the supply of gas to the petitioners' district they will have to be provided by the Salford corporation and not by the petitioners, and any sums expended on account of new pipes and mains will not cause any increase in the price of gas supplied in the petitioners' district by the Salford corporation; (2) the petitioners' district can, if the Salford corporation so think fit, be supplied by mains and pipes other than those in the Swinton district, and proposed to be purchased under the powers of the bill; (3) if, as alleged in their petition, the petitioners' district is within the gas limits of gas supply of the Salford corporation the Salford corporation can be compelled to supply the district with gas, and the manner of affording such supply is a question for the Salford corporation and not for the petitioners; (4) the Salford corporation are petitioners against the bill, and in their petition the corporation raise the same objection as the petitioners raise in their petition, and so far as regards this ground of opposition to the bill the *locus standi* of the corporation of Salford is conceded; (5) the petitioners have not, and

their petition does not, allege or show that they have any such interest in the objects of the bill as, according to the practice of Parliament, entitles them to be heard against it on any of the grounds specified in the petition.

Batten (for petitioners): The district of the Swinton and Pendlebury local board intervenes between the gasworks of the corporation at Salford and the district of Little Hulton, and if the bill is passed in its present form, the corporation of Salford will say that they are put to the expense of laying new and circuitous mains outside the Swinton and Pendlebury district to our district, and will charge us a different rate to what they charge in Salford, and will, no doubt, raise our gas rates to the authorised maximum of 5s., whereas they only now charge us 3s. 2d., and have promised to further reduce that charge to 2s. 9d.

Bidder, Q.C. (for promoters): It is true that the mains which supply the district of Little Hulton from Salford pass through the district of the Swinton and Pendlebury local board; but they also pass through the Barton rural sanitary district after leaving the Swinton district, and before reaching that of Little Hulton, so that not only that district will be affected. The question, however, is one for the suppliers of gas, namely, the corporation of Salford, to whom the mains belong, and not for the consumers; and I submit that the prospect of injury to the Little Hulton district is too remote to entitle its local board to be heard against the bill.

The CHAIRMAN: The *Locus Standi* of the Petitioners is *Allowed*.

Agents for Petitioners (2), *Batten, Proffitt & Scott*.

Agent for Bill, *Ball*.

WEAR VALLEY EXTENSION RAILWAY BILL [H. L.]

Petition of THE CUMBERLAND COUNTY COUNCIL.

13th June, 1892.—(Before Mr. PARKER, M.P., Chairman; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

County Council—Proposed Railway outside County—Claim to be heard to impose conditions on Promoters for Extension of Railway—Alleged Block Line—Interference with Road outside, but leading into Petitioners' County—S. O.

134B [*County Council alleged to be Injurious Affected by Bill*].—*Local Government Act, 1888, sect. 15.*

The bill authorised the construction of a short railway in the county of Durham, and was opposed by the county council of the adjoining county of Cumberland on the ground that it was not the best railway that could be made under the circumstances, being incapable owing to its levels and engineering features from being subsequently extended into their county, while it would serve as a block line to prevent any other and more desirable railway being constructed. A bill for a competing railway simultaneously introduced into the House of Lords had been rejected by that House, but that bill had not been promoted or even supported by the petitioners. The petitioners further objected to the railway as proposed to be constructed as involving serious interference with and alteration of levels in a road, leading from the county of Durham into their own county, and forming an important means of communication between the two counties, and generally claimed to be heard under S. O. 134B and sect. 15 of the Local Government Act, 1888:

Held, however, that as no part of the railway was to be constructed within the petitioners' county, and the interference with the road was eight miles beyond the boundary of their county, the petitioners were not entitled to be heard against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petitioners do not allege, nor is it the fact, that any of their land, property, or rights will be taken or interfered with under the bill; (2) the bill is for making a short branch railway wholly within the county of Durham from the North-Eastern railway system at Stanhope to Wearhead, a place some miles distant, and separated by a high mountainous range from the county of Cumberland, and the petitioners have no interest in the subject-matter of the bill which entitles them to be heard against it; (3) the petitioners do not allege or disclose in their

petition any injury to the administrative county of Cumberland which entitles them to be heard against the bill, according to the practice of Parliament. Their complaint virtually is, that another rival bill, which they did not promote or support, and which has been rejected by the House of Lords, would be more beneficial to their county, but this gives them no ground for opposing the bill; (4) the objection that the proposed railway is incapable of being extended to Alston, and is intended as a block line, and other statements in paragraphs 7, 8, 9, and 10 of the petition, have no foundation, and are inconsistent with the evidence given before the Select Committee of the House of Lords, by whom the two bills were considered; (5) the petitioners are not the county or road authority which has jurisdiction over the roads and bridge referred to in paragraph 8 of their petition, which will be crossed on the level or otherwise interfered with by the proposed railway; (6) the petitioners show no ground in their petition which entitles them to be heard against the bill.

Pembroke Stephens, Q.C. (for petitioners): The railway authorised by the bill, is from Stanhope to Wearhead, which it is true, as the objections to the *locus standi* point out, are in the county of Durham, and not in Cumberland, but the construction of the railway as proposed will injuriously affect the county of Cumberland.

Mr. CHANDOS-LEIGH: Do you rely upon S. O. 134b?

Pembroke Stephens: Yes, and upon the principle laid down by 134c, with regard to water, which admits county councils to be heard, although the supply is not drawn from their county. Between Stanhope in Durham, where the proposed line begins, and Alston in Cumberland, there is a break in the railway communication of 21 miles, the intervening district, containing collieries and works, is very hilly, and everything has to be carried across it by road, although there is a considerable interchange of traffic. There was a competing bill in the House of Lords, called the St. John's Chapel railway, which stopped two miles short of Wearhead, but higher up the hillside, and, therefore, much more capable of being extended to Alston.

Mr. CHANDOS-LEIGH: Did you oppose in the House of Lords?

Pembroke Stephens: No, we preferred to leave the two rival companies to fight it out, rather than go to the expense of opposing ourselves. If this line is authorised, it cannot be extended to Alston, and will serve as a block line to prevent another railway, which would accommodate

Cumberland as well as Durham, being made. The proposed railway is also laid out so as to seriously interfere with the road which forms the highway between the two counties, and will cause a series of acclivities and declivities in the road which is now level. We ask to be heard, that an undertaking may be obtained from the promoters, to extend this railway hereafter into our county, as a condition of their obtaining the bill.

The CHAIRMAN: Will this interference with the road be in your county?

Stephens: No; but the continuation of this road is in our county.

Mr. CHANDOS-LEIGH: If we admitted the petitioners to be heard we should open the door to this, that a number of local authorities having control over a road might agree to a thing being done to the road, but an outside authority might interfere and object.

Richards, as *amicus curiæ*, called the attention of the Court to the *London and North-Western Railway Bill*, on the petition of the *Wallasey Local Board* (*Richards & Michael*, 266).

The CHAIRMAN: The stopping up of a foot-path is a different thing from putting two or three bridges across a road and altering the levels of it.

Pembroke Stephens: I also claim to be heard on the broad ground that sect. 15 of the Local Government Act, 1888, constituted county councils the representatives of the inhabitants of their counties in all matters of public importance. When the Court disallowed the *locus standi* of the Monmouthshire county council against the *Western Valleys (Monmouthshire) Water Bill*, 1891 (*Richards & Saunders*, 160), the House of Commons passed a special Standing Order to admit county councils against such bills in future.

Cripps, Q.C. (for promoters): No part of the railway is in the petitioners' county, and no part of the road within 8 miles of their county will be interfered with.

The CHAIRMAN: We do not think the petitioners have shown that any injury would be done to their county by this railway; and, as regards injury to the roads at a distance from the county, it is the business of those who are in charge of the roads to protect the interests of those who use the roads. With regard to the decision in the *Western Valleys (Monmouthshire) Water Bill*, the House of Commons did not say that the construction put upon S. O. 134a by this Court was too narrow or wrong in any way, but only that looking to the merits and the importance of questions connected with water supply, they determined in

future to make a Standing Order that should admit county councils in such cases. The Court are unanimously of opinion that in this case there is not sufficient injury shown to entitle the Cumberland county council to a *Locus Standi*.

Agents for Petitioners, *W. & W. M. Bell*.

Agents for Bill, *Durnford & Co.*

WHITLAND, CRONWARE AND PENDINE
RAILWAY (ABANDONMENT) BILL.

Petition of THOMAS JOHN BROWICK.

10th May, 1892.—(*Before Mr. PARKER, M.P.,
Chairman; &c., &c., &c.*)

No person appearing for the Petitioner, the
Locus Standi was *Disallowed*.

Agent for Bill, *Ball*.

END OF REPORTS OF 1892.

INDEX OF CASES

(BILLS AND PETITIONS)

OF THE SESSIONS 1890-91-92, REPORTED IN PART I. OF
THIS VOLUME OF REPORTS AND IN THIS PART.

	PAGE
AIRE AND CALDER AND RIVER DUN NAVIGATIONS JUNCTION CANAL BILL, 1891 (H.L.).	
<i>Petition of</i> OWNERS AND MASTERS OF RIVER CRAFT PLYING ON THE RIVERS HUMBER AND TRENT AND THE SHEFFIELD AND SOUTH YORKSHIRE NAVIGATION, COMMONLY CALLED THE SHEFFIELD AND KEADBY CANAL, BETWEEN HULL AND SHEFFIELD AND INTERMEDIATE PLACES ON THE SAID RIVERS AND NAVIGATION, AND THE AMALGAMATED SOCIETY OF LIGHTERMEN AND WATERMEN OF THE RIVER HUMBER	77
ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY BILL, 1890 (H.L.).	
<i>Petition of</i> (1) THE RHYMNEY RAILWAY COMPANY	1
„ (2) THE TAFF VALE RAILWAY COMPANY	3
AYR HARBOUR BILL, 1890.	
<i>Petition of</i> (1) THE ARDROSSAN HARBOUR COMPANY; AND (2) THE DUKE OF PORTLAND	5
BEVERLEY AND EAST RIDING RAILWAY BILL, 1890.	
<i>Petition of</i> THE SCARBOROUGH, BRIDLINGTON, AND WEST RIDING RAILWAY COMPANY	10
BILSTON COMMISSIONERS WATER BILL, 1890.	
<i>Petition of</i> THE GUARDIANS OF THE POOR OF THE SEISDON UNION	11
BLACKPOOL IMPROVEMENT BILL, 1892.	
<i>Petition of</i> THE NATIONAL TELEPHONE COMPANY	167
BRADFORD CORPORATION WATER BILL, 1892.	
<i>Petition of</i> THE LIVERSEDGE LOCAL BOARD	169
BRITON MEDICAL AND GENERAL LIFE ASSOCIATION BILL, 1890.	
<i>Petition of</i> (1) GEORGE MORLEY	11
„ (2) BERNARD BOALER	11
BURRY PORT AND GWENDREATH VALLEY RAILWAY BILL, 1891 (H.L.).	
<i>Petition of</i> (1) THE LOCAL BOARD OF HEALTH FOR THE DISTRICT OF THE BOROUGH OF LLANELLY	81
„ (2) THE LLANELLY HARBOUR AND BURRY NAVIGATION COMMISSIONERS	81
„ (3) THE GREAT WESTERN RAILWAY COMPANY	81
BUTE DOCKS (CARDIFF) BILL, 1890 (H.L.).	
<i>Petition of</i> (1) THE BARRY DOCKS AND RAILWAYS COMPANY	12
„ (2) THE ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY COMPANY, AND OF THE NEWPORT (ALEXANDRA) DOCK COMPANY, LIMITED	12
„ (3) THE GREAT WESTERN RAILWAY	14
„ (4) THE PONTYFRIDD, CAERPHILLY AND NEWPORT RAILWAY COMPANY ..	16
„ (5) LORD TREDEGAR	17

	PAGE
BUXTON LOCAL BOARD BILL, 1892.	
<i>Petition of</i> (1) SAMUEL HYDE AND WILLIAM BLACKWOOD	171
" (2) THE LEEK AND MOORLANDS BUILDING SOCIETY	171
CALEDONIAN RAILWAY (ADDITIONAL POWERS) BILL, 1891.	
<i>Petition of</i> THE NORTH BRITISH RAILWAY COMPANY	87
CENTRAL LONDON RAILWAY BILL, 1891	90
CORK AND FERMOY AND WATERFORD AND WEXFORD RAILWAY BILL, 1890.	
<i>Petition of</i> (1) THE GREAT SOUTHERN AND WESTERN RAILWAY COMPANY	19
" (2) THE NEW ROSS HARBOUR COMMISSIONERS AND MERCHANTS, INHABITANTS, &C., OF NEW ROSS	20
" (3) THE WATERFORD BRIDGE COMMISSIONERS	23
CROYDON AND CRYSTAL PALACE RAILWAY BILL, 1890.	
<i>Petition of</i> THE SOUTH-EASTERN RAILWAY COMPANY	25
DUNDEE EXTENSION, POLICE, IMPROVEMENT AND TRAMWAYS BILL, 1892.	
<i>Petition of</i> BUTCHERS AND FLESHERS IN DUNDEE AND LOCHEE AND OTHERS	174
DUNDEE HARBOUR BILL, 1892 (H.L.).	
<i>Petition of</i> (1) THE HARBOUR TRUSTEES OF ABERBROTHWICK	178
" (2) THE PROVOST, MAGISTRATES, AND TOWN COUNCIL OF ABERBROTHWICK, OR ARBROATH, AS SUCH, AND AS CREDITORS OF THE HARBOUR TRUSTEES OF ABERBROTHWICK, AND OF THE PERSONS HERETO SUBSCRIBING BEING ALSO CREDITORS OF THE SAID TRUSTEES	178
EAST GRINSTEAD GAS AND WATER BILL, 1892.	
<i>Petition of</i> OWNERS, LESSEES AND OCCUPIERS IN THE DISTRICT OF FOREST ROW, IN THE PARISH OF EAST GRINSTEAD	181
EDINBURGH MUNICIPAL AND POLICE BILL, 1891.	
<i>Petition of</i> (1) THE PAROCHIAL BOARD OF ST. CUTHBERT'S COMBINATION, EDINBURGH, AND ANDREW FERRIER, INSPECTOR OF POOR, FOR AND ON BEHALF OF THE SAID COMBINATION	91
" (2) THE PAROCHIAL BOARD OF THE CITY PARISH OF EDINBURGH	91
" (3) THE SCHOOL BOARD OF EDINBURGH	96
" (4) THE EDINBURGH STREET TRAMWAYS COMPANY	98
" (5) THE CORPORATION OF LEITH	99
" (6) THE EDINBURGH AND LEITH HERITABLE PROPERTY ASSOCIATION, THE EDINBURGH AND LEITH MASTER BUILDER'S ASSOCIATION, THE EDINBURGH AND LEITH HOUSE FACTORS' ASSOCIATION, AND OF INDIVIDUAL OWNERS OF PROPERTY, RATEPAYERS AND OTHERS IN THE CITY OF EDINBURGH	99
EDINBURGH STREET TRAMWAYS BILL, 1892 (H.L.).	
<i>Petition of</i> THE LORD PROVOST, MAGISTRATES, AND COUNCIL OF THE CITY OF EDINBURGH	184
ELECTRIC LIGHTING PROVISIONAL ORDERS (No. 11) CONFIRMATION BILL, (CHATHAM, ROCHESTER, AND DISTRICT, ELECTRIC LIGHTING ORDER) 1890.	
<i>Petition of</i> WALTER RICHARD SOLMAN	26
FOLKESTONE PIER AND LIFT BILL, 1890.	
<i>Petition of</i> RICHARD HAMMERSLEY HEENAN	28
FOLKESTONE, SANDGATE, AND HYPHE TRAMWAYS BILL, 1891.	
<i>Petition of</i> THE SOUTH OF ENGLAND TELEPHONE COMPANY, LIMITED	102

	PAGE
FORFAR AND BRECHIN RAILWAY BILL, 1891.	
<i>Petition of</i> (1) THE PROVOST, MAGISTRATES AND TOWN COUNCIL OF FORFAR, THE EARL OF STRATHMORE, JAMES TAYLOR, AND MANUFACTURERS AND TRADERS IN FORFAR	104
„ (2) THE CALEDONIAN RAILWAY COMPANY	108
GARVE AND ULLAPOOL RAILWAY BILL, 1890.	
<i>Petition of</i> THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY	30
GLASGOW CORPORATION BILL, 1890.	
<i>Petition of</i> THE PARTICK, HILLHEAD AND MARYHILL GAS COMPANY, LIMITED	31
GLASGOW AND SOUTH-WESTERN RAILWAY (STEAM-VESSELS) BILL, 1891 (H.L.).	
<i>Petition of</i> (1) THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY	111
„ (2) THE CALEDONIAN RAILWAY COMPANY	111
„ (3) THE CLYDE STEAMSHIP OWNERS' ASSOCIATION AND OTHERS	115
GLASGOW AND SOUTH-WESTERN RAILWAY BILL, 1892 (H.L.).	
<i>Petition of</i> THE PROVOST, MAGISTRATES AND COUNCIL OF THE ROYAL BURGH OF IRVINE	187
GLASGOW AND SOUTH-WESTERN RAILWAY (No. 2) BILL, 1892.	
<i>Petition of</i> THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY AND THE ARDROSSAN HARBOUR COMPANY	190
GLASGOW CORPORATION WATER BILL, 1892.	
<i>Petition of</i> THE CALEDONIAN RAILWAY COMPANY	191
GLASGOW SOUTH SUBURBAN RAILWAY BILL, 1891	117
GLASGOW, YOKER AND CLYDEBANK RAILWAY BILL, 1892.	
<i>Petition of</i> (1) THE LANARKSHIRE AND DUMBARTONSHIRE RAILWAY COMPANY	191
„ (2) THE CALEDONIAN RAILWAY COMPANY	191
„ (3) THE MAGISTRATES AND POLICE COMMISSIONERS OF THE BURGH OF CLYDEBANK	193
GREAT NORTH OF SCOTLAND RAILWAY BILL, 1890.	
<i>Petition of</i> (1) OWNERS, &c., IN THE VICINITY OF ELGIN	34
„ (2) JAMES SIMPSON	34
„ (3) THE CORPORATION OF INVERNESS	34
GREAT WESTERN RAILWAY BILL, 1891.	
<i>Petition of</i> (1) THE TAFF VALE RAILWAY COMPANY	117
„ (2) THE BARRY DOCKS AND RAILWAY COMPANY	120
HANDSWORTH (STAFFORD) RECTORY BILL, 1891 (H.L.).	
<i>Petition of</i> INHABITANTS AND CHURCHWARDENS OF HOLY TRINITY, HANDSWORTH	123
HIGHLAND RAILWAY (NEW LINES) BILL, 1890.	
<i>Petition of</i> WILLIAM YOUNG	35
KEIGHLEY CORPORATION BILL, 1891.	
<i>Petition of</i> THE LOCAL BOARD OF HEALTH FOR THE DISTRICT OF HAMWORTH, IN THE COUNTY OF YORK	125
LANARKSHIRE AND DUMBARTONSHIRE RAILWAY BILL, 1890.	
<i>Petition of</i> THE WEST HIGHLAND RAILWAY COMPANY	36
LANCASHIRE, DERBYSHIRE AND EAST COAST RAILWAY BILL, 1891.	
<i>Petition of</i> JOHN PRESTWICH	127
LANCASHIRE AND YORKSHIRE AND LONDON AND NORTH-WESTERN RAILWAYS (STEAM-VESSELS) BILL, 1892.	
<i>Petition of</i> (1) THE BELFAST STEAMSHIP COMPANY	195
„ (2) THE GLASGOW, DUBLIN AND LONDONDERY STEAM PACKET COMPANY	195

	PAGE
LANCASHIRE AND YORKSHIRE RAILWAY (STEAM-VESSELS) BILL, 1892.	
<i>Petition of</i> (1) THE CITY OF DUBLIN STEAM PACKET COMPANY	197
" (2) THE GLASGOW, DUBLIN, AND LONDONDERRY STEAM PACKET COMPANY	197
" (3) THE STEAMSHIP OWNERS' ASSOCIATION AND THE IRISH STEAMSHIP ASSOCIATION	199
LEA VALLEY DRAINAGE BILL, 1892.	
<i>Petition of</i> THE LONDON COUNTY COUNCIL	202
LOCAL GOVERNMENT PROVISIONAL ORDER (FOR THE FORMATION OF THE EDMONTON, ENFIELD, SOUTH HORNSEY AND TOTTENHAM JOINT HOSPITAL DISTRICT) CONFIRMATION BILL, 1891.	
<i>Petition of</i> (1) THE SOUTHGATE LOCAL BOARD	127
" (2) THOMAS JAMES MANN AND OTHERS	127
LOCAL GOVERNMENT PROVISIONAL ORDER NO. 10. (HALIFAX ORDER) CONFIRMATION BILL, 1892.	
<i>Petition of</i> THE CORPORATION OF BRADFORD	204
LONDON AND SOUTH-WESTERN RAILWAY BILL, 1890.	
<i>Petition of</i> THE POOLE BRIDOE COMPANY	36
LONDON, BRIGHTON AND SOUTH COAST RAILWAY (VARIOUS POWERS) BILL, 1890 (H.L.).	
<i>Petition of</i> WILLIAM DUKE AND OTHERS	39
LONDON COUNTY COUNCIL (GENERAL POWERS) BILL, 1891.	
<i>Petition of</i> THE BRUSH ELECTRICAL ENGINEERING COMPANY AND SIX OTHER ELECTRICAL LIGHTING COMPANIES	130
LONDON COUNTY COUNCIL (GENERAL POWERS) BILL, 1892.	
<i>Petition of</i> THE GAS LIGHT AND COKE COMPANY	204
LONDON COUNTY COUNCIL (MONEY) BILL, 1892.	
<i>Petition of</i> THE CORPORATION OF WEST HAM	208
LONDON COUNTY COUNCIL (SUBWAYS) BILL, 1892.	
<i>Petition of</i> THE BOARD OF WORKS FOR THE ST. GILES'S DISTRICT	210
MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (EXTENSION TO LONDON, &c.) BILL, 1891.	
<i>Petition of</i> (1) VISCOUNT PORTMAN	130
" (2) OWNERS, LESSEES, AND OCCUPIERS OF LANDS, HOUSES, AND PROPERTY IN THE PARISHES OF ST. MARYLEBONE AND ST. JOHN, HAMPSTEAD..	133
" (3) JOHN WOOLEY PITT AND THOMAS JOHN PITFIELD AND OTHERS ..	133
" (4) OWNERS, LESSEES, AND OCCUPIERS IN BROADHURST GARDENS, IN THE PARISH OF ST. JOHN, HAMPSTEAD	136
" (5) GEORGE BOULTBY AND OTHERS, OWNERS, &c., OF PROPERTY IN NOTTINGHAM	139
" (6) THE VICAR AND CHURCHWARDENS OF THE PARISH CHURCH OF ST. MARY, LEICESTER	139
" (7) THE TOWCESTER AND BUCKINGHAM RAILWAY COMPANY.. .. .	140
MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (EXTENSION TO LONDON, &c.) BILL, 1892.	
<i>Petition of</i> W. G. CHAPMAN AND COMPANY	212
MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (VARIOUS POWERS) BILL, 1891.	
<i>Petition of</i> THE GREAT WESTERN RAILWAY COMPANY	140
METROPOLITAN RAILWAY BILL, 1890.	
<i>Petition of</i> (1) THE VESTRY OF MARYLEBONE	40
" (2) THE VESTRY OF ST. PANCRAS	40
" (3) THE VISCOUNT PORTMAN	43
" (4) THE REVEREND H. S. EYRE	44
" (5) THE LONDON, BRIGHTON AND SOUTH COAST RAILWAY COMPANY ..	46
" (6) THE GREAT EASTERN RAILWAY COMPANY	46
" (7) THE MIDLAND RAILWAY COMPANY	46
" (8) THE GREAT NORTHERN RAILWAY COMPANY	46
" (9) THE LONDON, CHATHAM AND DOVER RAILWAY COMPANY	46
" (10) THE GREAT WESTERN RAILWAY COMPANY	46
" (11) THE METROPOLITAN DISTRICT RAILWAY COMPANY	49

	PAGE
MIDLAND RAILWAY BILL, 1892.	
<i>Petition of JAMES ADDY</i>	213
NELSON CORPORATION BILL, 1891.	
<i>Petition of</i> (1) JOHN BARROWCLOUGH	144
" (2) MESSRS. HENRY HARTLEY AND SONS	147
" (3) OWNERS AND OCCUPIERS OF MILLS ON THE RIVER CALDER	147
" (4) PADDIHAM AND HAPTON LOCAL BOARD	147
" (5) THE CORPORATION OF BURNLEY	147
NEWCASTLE-UPON-TYNE IMPROVEMENT BILL, 1892.	
<i>Petition of THE WALKER LOCAL BOARD</i>	215
NORTH BRITISH AND GLASGOW AND SOUTH-WESTERN RAILWAY COMPANIES BILL, 1890.	
<i>Petition of</i> (1) SHARP, STEWART AND COMPANY	50
" (2) WAREHOUSEMEN IN GLASGOW	50
" (3) THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY	53
" (4) THE SOLWAY JUNCTION RAILWAY COMPANY	53
NORTH BRITISH RAILWAY BILL, 1891.	
<i>Petition of PROPRIETORS, FEUARS, &c., in DUNDYVAN ROAD, COATBRIDGE</i>	151
NORTH-EASTERN RAILWAY (HULL DOCKS) BILL (H.L.), 1892.	
<i>Petition of</i> (1) THE SOUTH YORKSHIRE COAL OWNERS' ASSURANCE SOCIETY	217
" (2) OWNERS OF WHARVES AND WAREHOUSES, AND OTHERS, AT KINGSTON-UPON-HULL	217
NORTH-EASTERN RAILWAY BILL, 1892.	
<i>Petition of THE SOUTH YORKSHIRE COAL OWNERS' ASSURANCE SOCIETY</i>	217
PARTICK, HILLHEAD AND MARYHILL GAS AND ELECTRICITY BILL, 1890.	
<i>Petition of COMMITTEE OF RATEPAYERS, GAS CONSUMERS, AND FEUARS IN KELVINSIDE AND OTHERS</i>	53
PONTYPRIDD BURIAL BOARD BILL, 1892.	
<i>Petition of RATEPAYERS AND OTHERS WITHIN THE DISTRICT AFFECTED BY THE BILL</i>	221
REGENT'S CANAL, CITY AND DOCKS RAILWAY BILL, 1892.	
<i>Petition of</i> (1) THE CORPORATION OF WEST HAM	224
" (2) THE VESTRY OF ST. PANCRAS	227
RIBBLE NAVIGATION BILL, 1890.	
<i>Petition of THE CORPORATION OF SOUTHPORT</i>	56
RICHMOND FOOTBRIDGE (LOCK, &c.) BILL, 1890.	
<i>Petition of</i> (1) THE VESTRY OF HAMMERSMITH	60
" (2) THE BOARD OF WORKS FOR THE WANDSWORTH DISTRICT	60
" (3) THE CHISWICK LOCAL BOARD	60
" (4) INHABITANTS AND RATEPAYERS OF MORTLAKE AND RIPARIAN OWNERS	60
" (5) THE DUKE OF DEVONSHIRE	60
ROTHERHAM, BLYTH, AND SUTTON RAILWAY BILL, 1891.	
<i>Petition of THE MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY</i>	152
RHYMNEY RAILWAY BILL, 1890 (H.L.).	
<i>Petition of</i> (1) THE BARRY DOCK AND RAILWAYS COMPANY	64
" (2) THE TAFY VALE RAILWAY COMPANY	64
" (3) THE PONTYPRIDD, CAERPHILLY AND NEWPORT RAILWAY COMPANY	67
" (4) THE MARQUESS OF BUTE AND THE TRUSTEES OF THE WILL OF THE LATE MARQUESS OF BUTE	67
SAINT BARNABAS CHURCH LIVERPOOL BILL, 1892 (H.L.).	
<i>Petition of INHABITANTS OF THE ECCLESIASTICAL DISTRICT OF ST. BARNABAS</i>	229

	PAGE
SHEFFIELD AND MIDLAND RAILWAY COMPANIES' COMMITTEE BILL, 1891.	
Petition of (1) THE SHEFFIELD AND SOUTH YORKSHIRE NAVIGATION COMPANY ..	153
" (2) THE GREAT NORTHERN RAILWAY COMPANY	155
SOUTH-EASTERN RAILWAY BILL, 1890 (H.L.).	
Petition of THE OVERSEERS OF THE POOR FOR THE PARISH OF ST. SAVIOUR'S, SOUTHWARK	68
SOUTH-EASTERN RAILWAY BILL, 1891.	
Petition of THE LONDON, CHATHAM, AND DOVER RAILWAY COMPANY	157
SOUTH YORKSHIRE JUNCTION RAILWAY BILL, 1890.	
Petition of THE NORTH-EASTERN RAILWAY COMPANY	69
STOURBRIDGE IMPROVEMENT COMMISSIONERS BILL, 1891.	
Petition of THE STOURBRIDGE GAS COMPANY	159
SWINTON AND PENDLEBURY LOCAL BOARD BILL, 1892.	
Petition of (1) THE CORPORATION OF SALFORD	231
" (2) THE LOCAL BOARD OF LITTLE HULTON	233
TOTTENHAM AND FOREST GATE JUNCTION RAILWAY BILL, 1890.	
Petition of (1) OWNERS, LESSEES AND OCCUPIERS, ALONG THE LINE OF THE PROPOSED RAILWAY	71
" (2) INHABITANTS OF LEYTON, WANSTEAD, AND WEST HAM	72
TRAMWAYS PROVISIONAL ORDERS CONFIRMATION BILL (No. 2) (BRISTOL TRAMWAYS EXTENSION ORDER), 1891.	
Petition of THE BRISTOL WATERWORKS COMPANY	160
WEAR VALLEY EXTENSION RAILWAY BILL (H.L.), 1892.	
Petition of THE CUMBERLAND COUNTY COUNCIL	234
WESTERN VALLEYS (MONMOUTHSHIRE) WATER BILL, 1891.	
Petition of (1) THE MONMOUTHSHIRE COUNTY COUNCIL	161
" (2) THE VICAR AND CHURCHWARDENS OF THE PARISH OF MYNYDDISLWYN ..	163
" (3) THE BLACKWOOD GAS AND WATER COMPANY, LIMITED	164
WHITLAND, CRONWARE AND PENDINE RAILWAY (ABANDONMENT) BILL, 1892.	
Petition of THOMAS JOHN BROWICK	236
WORCESTER AND BROOM RAILWAY (EXTENSION OF TIME) BILL, 1890.	
Petition of THE STRATFORD-ON-AVON, WORCESTER AND MIDLAND JUNCTION RAILWAY COMPANY	75

INDEX TO SUBJECTS.

TO CASES REPORTED IN THIS PART.

* * Where a Standing Order is Referred to in the Index, the numbering is that of the Standing Orders for 1893.

ABSTRACTION (*See* GAS, WATER).

ACCESS (*See also* OBSTRUCTION),

bill prohibiting interference with — to subways of county council, opposed by local board as road authority, 210

interference with — to docks by construction of tramways, 215

partial interference with —, when sufficient to confer a *locus standi*, 212, 215

ACTS, PUBLIC (*See* STATUTES).

AMBIGUITY (*See* PRACTICE).

AGREEMENT (*See also* TRAMWAY, ETC.),

not to oppose, how far binding when bill altered in the first House, 231

ALLEGATION (*See* PRACTICE).

AMALGAMATION (*See* RAILWAY (1)).

APPEAL,

right of —, under general law, affected by bill, 174

APPROACH (*See* ACCESS).

AREA (*See also* GAS, WATER),

construction of railway across catchment — of reservoir of corporation supplying water to their district, 187

ASSOCIATION (*See* STEAMSHIP OWNERS, TRADE).

AUTHORITY (*See* LOCAL BOARD, PETITIONERS, PRACTICE).

BILL (*See* PRACTICE).

BOARD OF WORKS (*See* LOCAL BOARD).

BOROUGH (*See* CORPORATION).

BREACH OF FAITH (*See also* AGREEMENT, PRACTICE).

question of — not entertained by Court, 191

BRIDGE,

construction of — by county council, opposed by gas company claiming a landowner's *locus* for interference with pipes, 204

widening of railway by construction of — over road, interfering with light and air, 213

injurious affecting of district by delay in reconstruction of —, 227

- BURGH** (*See also* CORPORATION),
 extension of — and application of Acts relating to existing burgh to added area, opposed by traders, 174
 town council of Royal — in Scotland claiming to represent trade, 178
 communication between different parts of — affected by construction of railways, 193
- BURIAL BOARD**,
 constitution of — opposed by ratepayers and individual inhabitants within district affected by bill, 221
- CANAL**,
 extension of time bill for construction of railway and — opposed by local authority as delaying reconstruction of bridge provided for in the original Act, 227
- CAPITAL**,
 tramway bill for additional — opposed by corporation as future purchasers of tramways, 184
- CHURCH**,
 bill for sale and removal of — opposed by inhabitants of ecclesiastical district with authority of churchwardens, 229
- CHURCHWARDENS** (*See* CHURCH).
- CLAUSE** (*See* PRACTICE, SAVING CLAUSES).
- COMMISSIONERS** (*See* DRAINAGE, HARBOUR, POLICE).
- COMPANY** (*See* GAS, RAILWAY (2), ETC.).
- COMPETITION** (*See* CORPORATION, DOCK, GAS, HARBOUR, RAILWAY (3)).
- CONSERVANCY**,
 county council, represented on — board, claiming representation on Drainage commission, 202
- CONSTRUCTION OF ACT** (*See* PRACTICE).
- CONSUMERS** (*See* GAS, WATER).
- CONTRACT** (*See* AGREEMENT).
- CORPORATION** (*See also* BURGH).
 purchase of and power to work electrical tramway by — opposed by telephone company claiming protective clauses, 167
 — promoting bill for additional water works opposed by local board of district supplied by promoters, 169
 — of Royal burgh, claiming to represent trade, 178
 — opposing tramway bill conferring powers of agreement with local authorities as to mechanical power, purchase and lease of tramways, &c., on tramway company, 184
 construction of railway across catchment area of reservoir of — supplying water to district, 187
 opposition of — to bill of London County Council allocating sums to works already authorised, 208
 construction of tramways by — partly outside borough, opposed by local board of district, 215
 — as landowners, having acquired land since original Act conferring compulsory powers of purchase, opposing a bill for extension of time for purchase of lands, 224
 agreement by — not to oppose bill, how far binding when bill altered in first House, 231
- COUNTY COUNCIL** (*See also* CORPORATION, LOCAL BOARD),
 London —, apprehending injury to river inside county, opposing drainage bill where drainage area and proposed works outside county, 202
 London — claiming representation on Drainage commission, 202
 construction of bridge by London — opposed by gas company having pipes in streets within limits of deviation, and claiming to be heard as landowners, 204

COUNTY COUNCIL—*Continued.*

- London — seeking to impose improvement ("Betterment") rate opposed by ratepayers, 204
- money bill of —, allocating sums to works already authorised, opposed by corporation, 208
- subways bill of — opposed by Board of Works as road authority, 210
- seeking to compel promoters of railway outside county to extend same into county, 234

COURT OF REFEREES (*See PRACTICE*).

CREDITORS (*See also MORTGAGEES*),

- and mortgagees of harbour rates opposing reduction of same by bill, 178

DESCRIPTION (*See PETITIONERS, PRACTICE*).

DEVIATION (*See LIMITS OF*).

DISSENTIENT (*See RATEPAYER, SHAREHOLDER*).

DISTINCT INTERESTS (*See CORPORATION, OWNER, REPRESENTATION, TRADERS*).

DRAINAGE,

- scheme opposed by county council apprehending injury to river in their county, 202
- claim for representation by county council on — commission, 202

DOCK (*See also HARBOUR*),

- interference with access to — by construction of tramways, 215
- alleged injurious affect upon existing competition by amalgamation of — with railway, 217

EASEMENT,

- gas company having — in roads to lay pipes, claiming landowners' *locus standi*, 204
- interference with — of light and air, how far entitling to a *locus standi*, 213

ELECTRICITY (*See TRAMWAY*).

EVIDENCE (*See PRACTICE*).

EXTENSION (*See also BURGH*),

- of burgh, and application thereto of Acts relating to existing burgh, opposed by traders, 174

EXTENSION OF TIME BILL (*See also CORPORATION, LANDOWNER, RAILWAY (2),*),

- for purchase of lands opposed by corporation as landowners, they having acquired land since the original Act conferring compulsory powers, 224
- for construction of railway and canal opposed by local authority as delaying reconstruction of bridge provided for in original Act, 227

FREIGHTERS (*See TRADERS*).

GAS,

- company, claiming to be heard as landowners, against construction of bridge, 204
- abstraction of part of district of supply and purchase of mains used for supply of — to local board, opposed by local board, apprehending the raising of gas rate to consumers, 233

HARBOUR (*See also DOCK*),

- reduction of rates at one — opposed by trustees of competing harbour, 178

HIGHWAY. (*See ROAD*).

HOUSE (*See OWNERS, &c.*).

- INHABITANTS** (*See also* RATEPAYERS),
of ecclesiastical district opposing bill for sale and removal of church, 229
- INJURIOUS AFFECTING** (*See also* ACCESS, LANDOWNER, RAILWAY (3)),
of telephone company by tramway propelled by electricity, 167
of hydropathic establishment by conveyance of mineral springs and pump-room to local board, with power to sell water, 171
of water supply of local authority, how far entitling to a *locus standi* under S. O. 134A, 169
of town by reduction of rates at competing harbour, 178
of district by abstraction of water by water company, 181
of streams and surface water by construction of railway across catchment area of reservoir, 187
general — of burgh by construction of railway, 193
how far — must be alleged in the petition, 202
caused by interference with access, when entitling to a *locus standi*, 212
mere — of property, when entitling to a *locus standi*, 213
of district alleged, by delay in reconstruction of bridge under extension of time bill, 227
- INJURY** (*See* INJURIOUS AFFECTING).
- LAND** (*See also* LANDOWNER, OWNERS, ETC.),
suppression of facts at Local Government enquiry as to —, a question for Committee on bill, 224
- LANDOWNER** (*See also* OWNERS),
corporation as — opposing construction of railway across catchment area of their reservoir, 187
gas company claiming to be heard as — against bill for construction of bridge, 204
locus claimed by corporation as —, in respect of land purchased since the Act conferring compulsory powers of purchase over it, against bill for extension of time, 224
- LEGISLATION**,
past —, telephone companies affected by development of electrical science claiming to discuss, 167
complaint against existing —, where non-opposition was alleged to be owing to misapprehension, 174
complaint against existing —, by corporation opposing money bill of county council, 208
- LESSEE** (*See* OWNERS, &c).
- LIGHT AND AIR** (*See* EASEMENT).
- LIMITS OF DEVIATION**,
gas company with pipes within — claiming to be heard as landowners against construction of bridge, 204
- LOCAL BOARD, AND AUTHORITY** (*See also* CORPORATION, COUNTY COUNCIL),
conveyance of mineral springs and pump-room to — opposed by owner and lessee and mortgagees of hydropathic establishment, 171
— supplied with water by promoters opposing bill for additional water works, 169
tramway bill containing powers of agreement with — as to use of mechanical power, and purchase of tramways, opposed by corporation, 184
opposition of — outside metropolis to money bill of London County Council allocating sums to works already authorised, 208
— as road authority opposing subways bill of county council, 210
claim of — to represent traders, 212
— alleging interference with access to docks and consequent injury to trade, opposing construction of tramway, 215
— alleging injury to district by delay in the construction of bridge provided for in original Act, on petition against an extension of time bill, 227
opposition of — to purchase of mains supplying gas to district on ground of increased rates to consumers, 233
- LONDON COUNTY COUNCIL** (*See* COUNTY COUNCIL).

- MORTGAGEES (*See also* CREDITORS),
of hydropathic establishment opposing conveyance to local board of mineral springs and pump-room, 171
and creditors of harbour rates opposing reduction of same, 178
- MANUFACTURERS (*See* TRADERS).
- MECHANICAL POWERS (*See* TRAMWAY).
- MERCHANTS (*See* TRADERS).
- MINERAL SPRINGS (*See* SPRINGS).
- MUNICIPAL (*See* CORPORATION).
- NAVIGATION (*See* DOCK, HARBOUR).
- OBJECTIONS (*See* PRACTICE).
- OBSTRUCTION (*See also* ACCESS),
of access to business premises by stopping up of streets by construction of railway, 212
- OCCUPIERS (*See* OWNERS, &c.).
- OWNERS, LESSEES, AND OCCUPIERS (*See also* RAILWAY (2)),
and mortgagees of hydropathic establishment opposing conveyance to local board of mineral springs and pump-room, 171
not being consumers within district of supply opposing bill of water company for additional works, 181
- PETITION (*See* PETITIONERS, PRACTICE).
- PETITIONERS (*See also* PRACTICE),
alleged interference with mineral springs used by—, 171
legal proceedings by— against promoters, and withdrawal of appeal on settlement of terms, 174
resolution by— as local authority to purchase tramways of promoting company, 184
steamship owners' associations as— claiming to represent their individual members, 199
agreement not to oppose by— how far binding when bill altered in first House, 231
- PIPES (*See* OAS, ROAD, WATER).
- POLICE,
practice of Committee on— and sanitary bills, as affecting question of *locus standi*, 174
interference with roads and sewers of burgh by construction of railway opposed by— Commissioners of burgh, 193
- POLLUTION (*See* RIVER, WATER).
- PORT (*See* DOCK, HARBOUR).
- POWERS,
transfer of— of electrical tramway company to corporation, opposed by telephone company, 167
to local board to sell water from mineral springs opposed by owner of hydropathic establishment, 171
- PRACTICE (*See also* PETITION),
ambiguity of definition of "mineral springs" in bill as ground of *locus standi* of owners of hydropathic establishment, 171
of Committee on police and sanitary bills as affecting question of *locus standi*, 174
where constituents of member of Court are affected by bill, 174
limited *locus standi* allowed to discuss alleged conflict between local Act and general law, 174

PRACTICE—*Continued.*

sufficiency of allegation in petition, as to "injurious affecting," 184, 202
 the Court will not consider an allegation as to breach of faith, 191
 the construction of a statute is not a question for the Court, 191
 where a large trade association petitions jointly with individual traders, 199
 how far the Court will consider the question of general public policy, 199
 where clause conceded, *locus standi* allowed for the purpose of seeing that
 clause is inserted in bill, 204
 what constitutes a landowner's *locus standi*, 204
 a single ratepayer not entitled to be heard in his individual capacity as a
 ratepayer, 221
 alleged suppression of facts at Local Government enquiry, a question for
 Committee, 224
 agreement not to oppose, how far binding when bill altered in first
 House, 231

PROTECTIVE CLAUSES (*See* SAVING CLAUSES).**PUBLIC MEETING** (*See* RATEPAYERS).**PUMP-ROOM,**

extinguishment of rights in —, by conveyance to local board, with power to
 sell water, opposed by owners of hydropathic establishment, 171

RAILWAY. (1) AMALGAMATION. (2) COMPANY. (3) COMPETITION.(1) *Amalgamation,*

between railway and docks causing injury to traders by removal of com-
 petition, 217

(2) *Company,*

— proposing to construct a railway across catchment area of
 reservoir of corporation supplying water to the district, 187

extension of railway opposed by a —, whose lands were scheduled,
 claiming landowners' *locus standi*, 191

construction of railway on embankment in burgh by —, opposed by Police
 Commissioners of burgh, 193

— asking for steamboat powers, opposed by independent steamboat
 companies, 195, 197

— stopping up streets by, by construction of railway, opposed by
 manufacturers, 212

widening of line by —, causing interference with light and air of peti-
 tioners' premises, 213

extension of time bill for purchase of lands by —, opposed by corporation
 as landowners, they having acquired the land since the original Act
 conferring compulsory powers, 224

extension of time bill for construction of railway and canal by —, opposed
 by local authority as delaying reconstruction of bridge provided for in
 original Act, 227

county council opposing promotion by — of railway outside county on
 ground of interference with road leading into county, 234

(3) *Competition,*

— alleged by independent steamboat companies against railway
 company seeking steamboat powers, 195, 197

— alleged by steamship owners' associations against railway
 seeking to acquire steamboat powers, 199

alleged injurious affect upon existing — by amalgamation bill, 217

RATEPAYERS (*See also* CORPORATION, INHABITANTS),

— not dissenting at statutory meeting, represented by local
 board, 171

gas company as — opposing construction of bridge, 204

opposing imposition of improvement ("Betterment") rate by London
 County Council, 204

insufficiency in numbers of — and inhabitants opposing bill for con-
 stitution of burial board, 221

single — not entitled to be heard in individual capacity as ratepayers, 221

RATES (*See also* HARBOUR, RAILWAY (2)), .

- reduction of —, at one harbour, opposed by trustees of competing harbour, 178
- cost of construction of bridge by county council to be borne by local — and by improvement —, 204
- collector of — not petitioning as such, but signing petition of ratepayers, not entitled to be heard, 221

REFEREES (*See* PRACTICE).

REPEAL,

- by water company of section in former Act, as ground for limited *locus standi* of owners, &c., 181

REPRESENTATION (*See also* INHABITANTS, LOCAL BOARD, RATEPAYERS, &c.),

- of ratepayers by local board, 171
- of trade by town council of Royal Scotch burgh, 178
- claim of county council outside drainage area to — on Drainage commission, 202
- alleged — of gas company as ratepayers by county council, 204
- alleged — of ratepayers and inhabitants of district, insufficient in number, by local authority, 221
- sufficiency of — of inhabitants of an ecclesiastical district petitioning against church removal bill, 229
- insufficiency of — of members of congregation by a single individual, 229

RESERVOIR,

- construction of railway across catchment area of — of corporation, and apprehended interference with streams, 187

RESIDENTS (*See* INHABITANTS).

RES JUDICATA (*See* LEGISLATION).

RIGHT OF WAY (*See* ROAD).

RIVER,

- apprehended affecting of — by abstraction of underground water by water company, 181
- apprehended interference with, and pollution of —, by construction of railway across catchment area of reservoir, 187
- proposed diversion and widening of —, under drainage bill, opposed by county council outside the drainage area, 202

ROAD,

- interference with — by water company, opposed by owners, &c., 181
- in burgh, interference with, by construction of railway, opposed by Police Commissioners of burgh, 193
- alteration of levels of —, and disturbance of gas pipes by construction of bridge, opposed by gas company, 204
- corporation petitioning against money bill of county council, allocating sums to works already authorised, as causing interference with —, 208
- stopping up of —, by bill for construction of railway, opposed by manufacturers, 212
- blocking of — by tramway, causing interference with access to docks, 215
- interference with — outside county, no ground for *locus standi* to county council as road authority, 234

ROAD AUTHORITY (*See* LOCAL BOARD, ROAD).

SANITARY AUTHORITY (*See* CORPORATION, LOCAL BOARD).

SAVING AND PROTECTIVE CLAUSES,

- telephone company claiming —, on transfer of electrical tramway to corporation, 167

SEWERS,

- in burgh, interference with, by construction of railway, opposed by Police Commissioners of burgh, 193

SPRINGS,

- mineral — and pump-room, extinguishment of rights in, by conveyance to local board, with power to sell water, 171
- mineral —, ambiguity in meaning of, as ground for owner of hydropathic establishment to oppose bill, 171

STANDING ORDERS,

- 171 [No powers to be given to local authorities to work, &c., tramways], 167
- 134A [Local authorities to have *locus standi* against lighting and water bills], 169
- 134 [Municipal authorities and inhabitants of towns], 178, 181, 184, 187, 193, 208, 215, 221, 227
- 156 [Railway companies not to acquire canals, docks, steam-vessels, &c.], 195, 199, 217
- 134B [County council alleged to be injuriously affected by bill], 202, 234
- 133A [Chambers of commerce, &c., may be heard in relation to rates and fares], 217.

STATUTES (PUBLIC, CITED),

- General Police and Improvement (Scotland) Act, 1862, 193; s. 363, 174
- Harbour, Docks and Piers Clauses Act, 1847, s. 30; 217
- Local Government Act, 1888, s. 15; 234
- Metropolitan Board of Works (Loans) Act, 1869, ss. 38, 50; 208
- Metropolis Management Act, 1855, s. 135; 208
- Poor Law Act, 1879, s. 17; 221
- Public Health (Scotland) Act, 1867, ss. 89, 90; 187
- Roads and Streets in Police Burghs (Scotland) Act, 1891, 193
- Tramways Act, 1870, s. 43; 184

STEAMBOAT (*See also* STEAMSHIP OWNERS),

- opposition of independent — companies to railway seeking steamboat powers, 195, 197

STEAMSHIP OWNERS (*See also* STEAMBOAT),

- opposition by — associations claiming to represent their individual members against bill of railway company asking for steamboat powers, 199

STOPPAGE (*See* ACCESS, ROAD).STREAM (*See* RIVER).STREET (*See* ROAD).

SUBWAYS,

- county council bill containing prohibition of interference with access to —, opposed by local board as road authority, alleging interference with their powers and duties, 210

TELEPHONE,

- company, without statutory powers, opposing transfer of electrical tramway to corporation, and claiming protective clauses, 167

TOLLS (*See* HARBOUR, RATES).TOWN COUNCIL (*See* CORPORATION).TRADE (*See also* TRADERS),

- town council of Royal burgh claiming to represent —, 178
- injury to — by removal of competition, by amalgamation of railway with docks, 217
- opposition to amalgamation bill by association of coalowners representing coal — of district, 217

TRADERS (*See also* TRADE),

- opposing extension of burgh and application thereto of existing Acts affecting their trade, 174
- claim of local authority to represent —, 212

TRAFFIC (*See* RAILWAY, TRAMWAY).

TRAMWAY,

propelled by electricity, proposed transfer of, to corporation, opposed by telephone company, 167

bill of — company containing powers of agreement with local authorities as to mechanical power, purchase of tramways, &c., opposed by corporation, 184

construction of — by corporation, partly outside borough, opposed by local board of district, alleging interference with access to docks in borough, 215

TRUSTEES (*See* HARBOUR).

UNDERGROUND WATER (*See* WATER).

VESTRY (*See* LOCAL BOARD).

WATER (*See also* WATERWORKS),

local authority alleging that they are injuriously affected as to supply of —, how far entitled to *locus standi* under S. O. 134A, 169

bill for additional works by — company, opposed by owners not being consumers within district of supply, 181

abstraction of underground — by water company, 181

owners allowed a limited *locus standi* against — bill, which repealed a section in a former Act providing for a supply of water by meter for non-domestic purposes, 181

opposition of corporation, supplying — to their district, to the construction of railway across catchment area of their reservoir, 187

interference with, and pollution of streams and surface — arising from the construction of railway, 187

WATERWORKS (*See also* WATER),

bill for additional —, opposed by local board whose district was supplied by promoters, 169

WELL,

apprehended affecting of — by abstraction of underground water by water company, 181

agreements for the purchase or lease by the corporation of the aforesaid tramway from Waterloo Place to Jock's Lodge. Your petitioners object to the said clause and to the power thereby proposed to be conferred upon the corporation and themselves. So far as regards the power to agree for the purchase of the tramway, your petitioners submit that there is no necessity for the clause, since provision is made under the Tramways Act, 1870, in that behalf, and your petitioners object to any variation of the terms of those provisions. Your petitioners further submit that the proposal to confer upon the corporation the power of leasing the said tramway is objectionable and contrary to the spirit of the said Act of 1870, and ought not to be granted." Para. 4. "By clause 9 of the bill the corporation seek power to enter into similar agreements with your petitioners, and with other local authorities named in the clause as regards the tramways within the respective districts of such authorities. Some of the said local authorities have entered into agreements with your petitioners in relation to the tramways within their respective districts, and your petitioners are apprehensive that under the powers of the said clause agreements might be entered into by the corporation with such authorities which would prejudice their rights and interests. A proviso is inserted at the end of the clause for the protection of such local authorities, but no similar proviso is inserted for the protection of your petitioners." Clause 11 of the bill provides that the corporation may sublet any of the tramways of which they may become the lessees under the powers conferred upon them by clauses 8 and 9, and clause 12 provides that if the corporation acquire by purchase any of our tramways under clauses 8 and 9, the provisions of the Tramways Act, 1870, with respect to the purchase of tramways by local authorities, shall be read and have effect subject to the provisions of any agreement to purchase made under the bill, and thus takes away the protection afforded by sect. 43 of that Act, that any purchase made by a local authority shall be subject to the approval of the Board of Trade.

Cripps, Q.C. (for promoters): The short answer to the objections taken by the petitioners to clauses 8, 9, 11, and 12, giving power to the corporation to acquire by purchase or to have any of the tramways belonging to the petitioners is that the corporation are by those clauses only empowered to do so by agreement with the petitioners. The clauses are purely permissive, and subject to the agreement and consent of the tramway company.

The CHAIRMAN: We think that that is a valid objection to the petitioners' *locus standi* so far as clauses 8, 9, 11, and 12 are concerned.

Browne: Then I will proceed to state my objections to clauses 10, 13, and 14 of the bill. Clause 10 is as follows:—"On the completion of any purchase by the corporation under the provisions of this Act of the portions of tramways and undertaking, or any part thereof, referred to in the two immediately preceding sections, all the rights, powers, and authorities of the company or the owners thereof in respect to the undertaking sold, shall be transferred to and shall vest in and, subject to the provisions of this Act, may be exercised by the corporation." The result of that clause would be to allow the corporation to work the tramways themselves, and it is directly contrary to sect. 19 in Part I. of the Tramways Act, 1870, which prohibits a local authority from running carriages or taking tolls on any tramway constructed or acquired by them under sect. 43 of the Act, the prohibitory part of sect. 19 providing that "nothing in this Act contained shall authorise any local authority to place or run carriages upon such tramway, and to demand and take tolls and charges in respect of the use of such carriages." The promoters deliberately evade that prohibition by omitting to incorporate with the bill Part I. of the Tramways Act, 1870, which contains sect. 19, whereas they do incorporate by clause 2 of the bill Parts II. and III. of the Act. They also fail to comply with the provisions of S. O. 171, which prescribes, by a special series of clauses, the only conditions under which a local authority is to be permitted to work a tramway, whereas the bill does not contain any such clauses. Then again, clause 13 of the bill also evades the provision of sect. 19 of the Tramways Act, 1870, by giving the corporation power to lease tramways without the approval of the Board of Trade. Clause 13 is as follows:—"The corporation may from time to time lease to any person the right of user of the tramways or any part thereof, and the right of demanding and taking tolls and charges in respect of the same, and all or any of the rights, powers, and authorities pertaining to the tramways possessed by the corporation, and that on such terms and conditions and for such period as may be agreed on between the corporation and such person. The said tolls and charges shall not exceed those authorised by the Acts of the company, and may be such other and lesser tolls and charges as may be fixed and agreed between the corporation and the lessees." Sect. 19 of the Tramways Act, 1870, on the other hand, makes all leases of a tramway by a

local authority subject to the consent and approval of the Board. "When a tramway has been completed under the authority of a Provisional Order by any local authority, or where any local authority has, under the provisions of this Act, acquired possession of any tramway, such authority may, with the consent of the Board of Trade and subject to the provisions of this Act, by lease, to be approved by the Board of Trade, demise to any person, persons, corporation, or company, the right of user . . . of the tramway." That section is of great importance to a tramway company like the Edinburgh Street tramway company who own a series of tramways and work them as one through system, because the Board of Trade would not approve of a lease of any portion of our tramways hereafter acquired by the corporation except on fair terms as to through traffic, but if the corporation purchased any portion of our tramway under the bill they could, under clause 13, lease it to any body on any terms and conditions they chose, and the lessee might make it impossible for us to work the remaining sections of tramways in a proper manner for through traffic. I therefore ask to be heard against clause 13, as being a departure from the provisions of sect. 19 of the general Act which was framed for the protection of third parties. Now as regards clause 14. The clause is as follows: "The corporation on the one hand, and the company or any person on the other hand, may from time to time enter into and carry into effect contracts or arrangements for the following purposes, or any of them, that is to say:—The management, use, working, and maintenance of the tramways; the supply of rolling stock, &c. The payment to be made and the conditions to be performed with respect to the makers aforesaid. For the interchange, &c. . . . of traffic, &c." "Provided always that nothing in this Act shall authorise the corporation themselves to place or run carriages upon the tramways and demand or take tolls and charges in respect of the use of such carriages." That is a clause that appears at first sight to give by the proviso the tramway company the protection afforded by sect. 19 of the Tramways Act, 1870, but this is illusory, because it is a clause that must be submitted to a Wharnclyffe meeting of proprietors of the tramway company, and should they not approve of it the company will be struck out of it, and the proviso may be dropped by the promoters and the company left without the protection given by it. In order to get the protection therefore our shareholders would have to approve

of the clause, or by rejecting it would lose the protection of the proviso, which ought to stand in itself as a substantive clause of the bill, or sect. 19 of the Tramways Act, 1870, should be incorporated with the bill.

Cripps, Q.C. (for promoters): The objection raised by the petitioners against clause 10 is really an objection on Standing Orders, namely, that it will enable the corporation to run carriages and take tolls on the tramways purchased by them under the power given by clauses 8 and 9 of the bill, contrary to S. O. 171 of this House, and as such is a question for the officers of the House, and not for the petitioners. They further object that clause 10 is contrary to sect. 19 of the Tramways Act, 1870, but the fallacy of that argument lies in the fact that we should not purchase the tramways under the Tramways Act, 1870, but under the powers of the bill. Then as regards clause 13, which enables us to lease the tramways owned by us to any person without having to obtain the approval of the Board of Trade to the lease, that is an objection that could be raised by the Board of Trade, but inasmuch as it relates only to our own tramways, is not a question that can be raised by the petitioners.

The CHAIRMAN: With regard to both clauses 10 and 13, it must be borne in mind that the tramway company have a large interest. The greater part of the total earning of this system arises from the through traffic. They are a possible lessee, they have an interest to protect their chance of becoming a lessee, and if you had exceptional power to work the tramways yourselves they would be hurt. The fact that this is a continuous system, and they own a part of it, and it has to be worked as a whole, is a strong point in their favour.

Cripps: With regard to clause 14, the petitioners contend that, as that is a clause which a Wharnclyffe meeting of shareholders of the company must approve, if the meeting should not approve of the clause it would have to be struck out of the bill, and then they would lose the benefit of the proviso prohibiting the corporation from working the tramways themselves.

Mr. CHANDOS-LEIGH: In that case the tramway company would lose the benefit of the proviso, and at the same time have no similar protection under sect. 19 of the Tramways Act, 1870, as that section is not incorporated with the bill, while Parts II. and III. of the Act are incorporated.

Cripps: I contend that all that would happen if the shareholders did not approve of the clause would be that the name of the company

would be struck out of the clause, but that the clause so altered and the proviso would remain in the bill.

The CHAIRMAN: If the shareholders do not approve there is nothing to prevent your striking the clause out altogether. Should not the petitioners go before the Committee to see that the proviso to the clause remains part of the bill?

Cripps: We should be bound in Committee to leave the clause in the bill.

The CHAIRMAN: The *Locus Standi* of the Petitioners is *Allowed* against clauses 10, 13, and 14 of the bill and so much of the preamble as relates thereto.

Agents for Petitioners, *Rees & Frere*.

Petition of (2) THE COUNTY COUNCIL OF
MIDLOTHIAN.

Power to Municipal Corporation to purchase Tramways outside Burgh—County Council—Purchase of Tramways beyond district of Petitioners—Injurious Affecting of Tramways within District—Future purchase of Tramways by Petitioners under Tramways Act, 1870, sect. 43—S. O. 134B [County Council alleged to be injuriously affected by Bill].

The county council of Midlothian also petitioned against the provisions of the bill (clauses 8-13) empowering the promoters to enter into agreements with the Edinburgh Street tramways company for the purchase or lease of the different portions of their undertaking, both within the city of Edinburgh and within the districts of the adjoining local authorities, including the county of Midlothian, subject however to the consent and agreement of the various local authorities, including that of the petitioners as the county council of Midlothian. The petitioners contended that the promoters would be enabled to acquire the portion of tramway situated in the burgh of Portobello beyond their district, thus leaving the tramways in their district interjected between two portions of tramway, both owned by the corporation of Edinburgh, but forming part of the same system of tramways. This, they contended, would injuriously affect them not only as regarded the

working of the portion in their district, but might affect them in the event of their exercising their option, under Part II. of the Tramways Act, 1870, of purchasing the portion of tramway in their district by raising the price demanded by the tramway company on account of the power conferred by the bill upon the corporation of Edinburgh to purchase the same portion. It was contended by the promoters that as regards the tramways in Portobello they could already purchase them by agreement under the powers of the Tramways Act, 1870, while as regards the portion of tramway in the county of Midlothian, the bill gave them no powers except subject to the consent of and by agreement with the county council:

Held, that under these circumstances the petitioners had no *locus standi* against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the said petition is not duly authorised and is not signed and presented in accordance with the provisions of sect. 56 of the Local Government (Scotland) Act, 1889, the requirements of which have not been complied with in respect of the petition, and the petitioners are not entitled in any other capacity to insist in or follow out the said petition or to be heard thereon; (2) the petitioners do not allege in the petition that any lands or other property belonging to them or in which they are interested will be taken or interfered with under the powers of the bill; (3) the bill being promoted by the corporation of Edinburgh for objects and purposes within the rights, powers, duties and functions of the corporation of Edinburgh, and no interest, rights or jurisdictions of or pertaining to the petitioners being sought to be affected or interfered with by any of the provisions of the bill, the petitioners are not entitled to be heard on the petition against the same; (4) the petitioners do not set forth in their petition, nor is it the fact that they represent the other local or road authorities or other persons mentioned in the bill with whom it is proposed by the bill to make agreements, and they are not entitled to be heard on behalf of or to represent the interests of any such local or road authorities or persons; (5) the petitioners are not entitled and do not set forth or possess any interest to be heard on clauses 4

and 6 of the bill in respect that the powers thereby sought apply to tramways in the ownership of the promoters; (6) the petitioners do not set forth in their petition nor do they possess any interest entitling them to be heard on clauses 8, 9, 10, 11, 12 and 14 of the bill, inasmuch as the powers proposed to be thereby conferred are agreement powers only, which could not be exercised so as to affect any rights or interests possessed by the petitioners without their consent, and such permissive or agreement powers do not entitle the petitioners to a *locus* to be heard against the bill; (7) the petitioners do not set forth in their petition nor do they possess any interest entitling them to be heard on clause 13 of the bill: the power proposed to be conferred on the corporation of Edinburgh to grant leases of their undertaking extends and applies only to the tramways and undertaking owned by the corporation, and the petitioners have no right or interest to be heard against the granting of such powers by Parliament as would enable the corporation of Edinburgh more conveniently to grant leases of their undertaking to any lessees; (8) the petitioners do not represent and are not entitled to be heard in the public interest against the bill nor are they entitled to raise any question or to be heard on the policy of Parliament with respect to the general Tramways Act, 1870, and the proposals of the bill; (9) the petitioners do not possess and at all events do not show by their petition that they possess any interest intended to be affected by the bill which entitles them, according to the practice of Parliament, to be heard against it.

Saunders, Q.C. (for petitioners (2)): The bill by clause 8 and 9 empowers the promoters to make agreements for the acquisition or leasing of the tramway, situate first within the city of Edinburgh, and secondly outside the city of Edinburgh, and within (1) the burgh of Leith, (2) the county of Midlothian, (3) the burgh of Portobello, and terms may be agreed on between the promoters and any one or more of these local authorities. We are the road authority and the local authority in respect of so much of the tramways as are in the county of Midlothian. The bill further provides that in the event of any lease to the promoters under the clauses of the bill, the promoters shall have the right of use thereof by any sub-lessee, who shall have all the rights of the tramway company in respect of the portions of tramway so leased, including the right of taking tolls and charges. And the bill provides that the provisions of the Tramways Act, 1870, with respect to the purchase of tramways by local authorities shall in their application

to so much of the undertaking of the company as may be acquired by the promoters under this bill be read and have effect subject to the provisions of any agreement made under this bill, and that the corporation and the tramway company may with the consent in writing of any local authority therein mentioned by any such agreement, cancel or alter all or any of the provisions of any agreement between such local authority and the tramway company scheduled to and confirmed by any of the Acts of the company. The promoters, therefore, take power by agreement to vary, not an agreement only, but the provisions of an Act which we have the benefit of, and which we submit ought not to be varied without our being heard.

Mr. CHANDOS-LEIGH: There are several bills this year in which corporations take power to acquire tramways outside their district, and in some cases to work them, and a Standing Order has been framed which has not yet been moved in either House to give powers to corporations to acquire tramways outside their district, provided they can show such special circumstances as in the judgment of the Committee would entitle them to do so.

Saunders: We submit this is a very important variation of the general law, in a manner that is not as yet recognised by the Standing Orders, and that as the local authority we should be allowed a *locus standi* to be heard in the matter. We submit that under the powers of the bill the promoters might by arrangement with the municipal authority of the burgh of Portobello acquire the portion of tramway within that burgh, which would have the effect of placing in the hands of the promoters an isolated section of the tramways beyond the jurisdiction of the county council of Midlothian, leaving the portion in the county of Midlothian interjected between the portion inside the city of Edinburgh and the portion in Portobello, thereby rendering the portion in Midlothian comparatively useless, although we are entitled hereafter to acquire it under the Act of 1870. Whatever reasons there may be in favour of the promoters acquiring the tramway immediately contiguous to them, those reasons do not necessarily apply to their acquiring a piece of tramway separated from them by an intervening piece of tramway in which we, as another local authority, are interested. It will be a manifest disadvantage to us if the promoters are authorised to bid against us for the purpose of acquiring the portion of the undertaking within the county of Midlothian. An agreement between the promoters and the tramway

company so far as regards the tramway within our district, could not be come to without our consent as the local authority, and if we refused our sanction and afterwards exercised our power to purchase it ourselves and went to arbitration to determine the price, our exercising our veto in that way might be put forward by the tramway company as a ground for demanding a higher price than we should otherwise have to pay. The promoters have themselves offered to purchase the tramway within our district under the parliamentary powers of agreement, and have been prevented simply by our refusing our consent as local authority.

The CHAIRMAN: Can any tramways in the county of Midlothian be acquired without your consent?

Saunders: No.

Mr. CHANDOS-LEIGH: Do you say it is compulsory for us to give you a *locus standi* under S. O. 134B?

Saunders: Not compulsory but competent, for we allege that we object to the bill as injuriously affecting our interests and those of the inhabitants of the district affected by the bill.

The CHAIRMAN: The Standing Order is discretionary. We have to be satisfied that your petition shows that you would be prejudiced. As far as I can see at present you cannot be prejudiced unless with your consent.

Mr. CHANDOS-LEIGH: The only possible ground for a *locus standi* for you would be that an authority like the county council of Midlothian ought to be before the Committee to watch the proceedings, but then the promoters cannot move without your consent.

Saunders: Only so far as regards the purchase of the tramway within our district; they can move without us with regard to purchase beyond our district. I submit that we shall be very seriously prejudiced if the promoters, not having acquired the tramways in our district, are to be permitted to go beyond us to another district and thus break the continuous line of tramway into three, and then found upon that an argument for the ultimate acquisition of that which is within our authority. I submit that if there is to be combined management it ought to be carried out by a combined system satisfactory to all the road authorities, and I submit that the mere fact that we are a road authority gives us sufficient interest to entitle us to a *locus standi*.

Mr. CHANDOS-LEIGH (to the promoters): Are all these tramways outside the district of the county of Midlothian in connection with those within the district?

Cripps, Q.C. (for promoters): Yes, it is all one system.

The CHAIRMAN: Under this bill you cannot go outside your own district into the district of any other authority without the consent of that authority?

Cripps: That is so. So far as Portobello is concerned we can, under the general Act, agree with Portobello to take this portion of tramway beyond the district of the county council of Midlothian without their consent.

The CHAIRMAN: The *Locus Standi* is Disallowed.

Agents for Petitioners (2), Grahames, Currey and Spens.

Petition of (3) THE CALEDONIAN RAILWAY COMPANY.

Use of Electrical Power on Tramways—Railway Company apprehending affecting of Electric Telegraphs, Telephones, and Signalling Apparatus—Induction and Leakage of Electrical Current—Power to Promoters to lay down Works for Electrical Power on Tramways carried across Railway Bridges—Apprehended Injury to Bridges.

Clause 4 of the bill empowered the promoters, with the consent of the Board of Trade, to use cable and electrical power on the tramways for the time being owned by them, and clause 6 empowered them to lay down and maintain works necessary for the use of such power upon the tramways. The Caledonian railway company claimed to be heard against clauses 4 and 6, on the ground that the use of electrical power upon the tramways, authorised by clause 4, would disturb and affect, by leakage and induction, the electrical currents employed by them for the purpose of telegraphs, telephones, and electrical apparatus for signalling, and by affecting the signalling apparatus would endanger the working of their railway. The petitioners also objected to the power contained in clause 6, on the ground that it would enable the promoters to carry out works in the roadway of certain bridges crossing their railway, which were not fitted, by their construc-

tion and form, to bear the necessary alterations, and would be rendered unsafe thereby. The promoters denied that the safety of the bridges would be affected, and contended that the injury apprehended by the petitioners under clause 4 of the bill was too remote to entitle them to a *locus standi* :

Held, however, that the petitioners were entitled to be heard against clauses 4 and 6 of the bill.

The *locus standi* of the petitioners (3) was objected to on the following grounds: (1) the petitioners do not allege in their petition, nor is it the fact, that any lands or other property belonging to them, or in which they are interested, will be taken or interfered with under the powers of the bill; (2) the petitioners do not allege in their petition any grounds entitling them, according to the practice of Parliament, to be heard against the bill on paragraphs 6, 7, 8 and 9 of their petition, and they are not entitled to be heard on those paragraphs, inasmuch as the tramways are already laid over the bridges referred to in the petition, and the petitioners do not allege that the said bridges are owned by them; the said bridges carry the public roads on which the tramways are laid, and such public roads within the city of Edinburgh are vested in the promoters as the corporation of Edinburgh; (3) the petitioners are not entitled to be heard against the bill, inasmuch as under the provisions of the Tramways Act, 1870, the petitioners have sufficient protection for their property, rights and interests, and no allegation is contained in the petition that the protective clauses of the said Act are not sufficient for that purpose; (4) the petitioners do not set forth any sufficient grounds in paragraphs 8 and 9 of the petition to be heard against the bill in respect of the use by the promoters of cable or electrical power on the tramways; the petitioners have no telegraphic or telephonic wires under the streets, and they have no powers to lay down any such wires therein, and the petitioners are not entitled to be heard against the exercise by the promoters of the bill of their existing statutory powers over the streets and roads within the city of Edinburgh, and to lay electrical lines and wires therein for the supply of energy; (5) the petitioners are protected by the provisions of the public Acts relating to the supply of electricity, and they are not entitled to be heard against the bill, inasmuch as the petition does not allege

that the said Acts do not sufficiently protect such rights and interests.

Pember, Q.C. (for petitioners (3)) : By clause 4 of the bill it is proposed to authorise the corporation, with the consent of the Board of Trade, to adopt and by their lessees use, during the periods therein mentioned, on the tramways (which are defined by the bill to mean the tramways and works and undertaking for the time owned by the corporation), or upon any part or parts of the tramways, as may from time to time be specified in any such consent, cable power (which is defined by the bill to mean and include haulage by means of wire, ropes, cables, chains, or appliances placed underground and worked by stationary engine power) or electrical power (which is defined by the bill to mean and include any means of working tramways by electricity, from time to time invented), for the purpose of moving the carriages upon the tramways, or part or parts of the tramways, as the case may be, subject to the provisions as to obtaining the consent of certain local authorities and other matters therein mentioned. By clause 6 of the bill it is proposed that if and whenever the corporation shall have authority under the provisions of the bill to use and adopt on the tramways, or any of them, or any part or parts thereof, cable power or electrical power as aforesaid, the corporation may erect and maintain all such engines, engine-houses, works, machinery, and appliances, and may construct, erect, lay down, and maintain, renew and repair, either above or underground, all such wires, tubes, hatches, pits, manholes, grooves, rails, works, and apparatus as may be requisite for the purpose of so working the tramways, and may for that purpose, subject to the restrictions and provisions contained in Part II. of the Tramways Act, 1870, so far as applicable, open and break up any street or road in which the tramways, or part or parts of the tramways, on which the corporation have from time to time authority to use and adopt cable power or electrical power, may be situate. The bill also proposes, by clauses 8 and 9, to authorise the corporation to make agreements for the purchase or leasing by the corporation of the section of the tramway of the company within the city from Waterloo-place to Jock's Lodge, or any part thereof, and the undertaking of that company situate within the burgh of Leith, the county of Midlothian, and the burgh of Portobello, or within any of the said districts. The tramways of the company within the city of Edinburgh, acquired or to be acquired by the corporation, cross the Caledonian railway by means of the bridge

carrying the Harrison-road over the petitioners' line at the east end of their Merchiston station. The proposals of the bill to authorise the use of cable or electrical power on the tramways, and enabling the corporation to lay down and maintain the necessary works, and to open and break up the roadways for the purpose, may seriously affect the petitioners, and hamper or restrict them in altering or reconstructing such bridge when required for the improvement of their railway or for any other purpose, and would enable the corporation to interfere with and injure the fabric and structure and endanger the stability of such bridge, and be most prejudicial and injurious to the interests of the petitioners. In the same way one of the sections of tramway outside the city in Leith, which the corporation are empowered to acquire under clause 9 of the bill, crosses a bridge carrying the road over our Leith branch railway.

Cripps, Q.C. (for promoters): We will concede the *locus standi* of the petitioners so far as regards protection to their bridges and railways.

Pember: That is not sufficient. The working of the tramways by electricity will seriously interfere with our telegraphs, telephones, and electrical signalling apparatus, and affect them by induction and leakage of the electrical current, more particularly in the case of tramways passing over bridges. The electrical circuits in connection therewith will be very close to the wires along the petitioners' railways, and they submit that the most stringent provisions for their protection, and for the protection of their electrical works and apparatus, and for preventing danger to the working of the railways should be provided.

Mr. CHANDOS-LEIGH: This is virtually what the National Telephone company have said in other cases where they were interested, *e.g.*, in the *Folkestone, Sandgate, and Hythe Tramways Bill*, 1891 (Rickards & Saunders, 102).

Pember: Yes, and I submit, if it is right that the telegraphic wires of the National Telephone company should be safeguarded by special clauses in view of the disturbance of their wires and apparatus, *à fortiori* such protection should at least be considered by Parliament with regard to a disturbance which may not merely mean interference with the convenience of user, but which may endanger the lives and limbs of passengers.

Mr. PARKER-SMITH: Is there any serious effect when two electrical currents cross one another at right angles?

Pember: I do not know, and that is what we want to find out, and what we should find out if we went before a Committee. The electric

currents used for tramways are very powerful, while those used for telegraphs and telephones are very weak and sensitive, and therefore liable to disturbance from many causes. The position of railways is stronger than that of telephone companies, for this reason that it is not merely a question of interference with convenience but a question of positive danger to life and limb.

Mr. CHANDOS-LEIGH: Has any railway company raised this point in the case of any of the electric railways?

Pember: I believe that a clause was put into the bill for the Hampstead and St. Pancras railway for the protection of the Midland railway, and in the Central London Railway Bill, the question of interference with the telegraphic apparatus of the London and North Western and Midland railways was considered. Moreover it is not merely a question of what may be done by the cable at the particular point where it crosses the bridge, for these powerful currents, where earth returns are used, affect the earth for miles. I submit, therefore, that the petitioners are entitled to be heard against this portion of the bill.

Cripps (in reply): This is a new point and a very important one. It is suggested that whenever a proposal is made to use electricity, on a tramway, a railway company, on a mere allegation like the present, is to have a *locus standi*. The petitioners wish to throw an enormous expense upon us which will practically prevent our working the tramways by electricity. The mere fact that the effect of the use of electricity by a railway or tramway is felt for miles is not sufficient to give the petitioners a *locus standi*. The effect of such uses of electricity has been thoroughly understood for the past few years, but this is the first occasion when a railway company has sought to be heard in a case of this kind.

The CHAIRMAN: The allegation of the petitioners is that if the promoters use electricity the telegraphic, telephonic, and signalling apparatus will be in danger and that will endanger the traffic on their railway. Whether that allegation is true or not, in fact, we cannot say, but the Court think it is sufficient to give them a *locus standi* against clauses 4 and 6 of the bill.

Locus Standi Allowed against clauses 4 and 6 of the Bill.

Agents for Petitioners (3), *Grahames, Curry and Spens*.

Agent for Bill, *Beveridge*.

EDINBURGH IMPROVEMENT BILL.

Petition of THE NATIONAL TELEPHONE COMPANY.

28th April, 1893.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. ROUNDELL, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Street Improvements by Municipal Corporation—Power to Acquire Lands and Pull Down Houses—Telephone Company Having Overhead Wires Affixed to Houses—Interference and Removal of Wires—Petitioners as Licensees of Owners and Occupiers—Injurious Affecting—Compensation under Lands Clauses Consolidated Act, 1845—Telegraph Act, 1878—Board of Works for Wandsworth District v. United Telephone Company [L.R. 13 Q.B.D. 904].

Part II. of the bill authorised the Lord Provost, magistrates, and council of Edinburgh to alter and improve streets, and for this purpose to acquire lands and to pull down houses, and the petitioners, the National Telephone company, alleged that in so doing it might be necessary for the promoters to remove and alter the position of their overhead wires and the standards and attachments of the same fixed by agreement with the owners to lands or buildings which the corporation might under the powers of the bill acquire and pull down, and they claimed to be heard in order to secure the same protection as was given to telegraphic wires underground, which might be interfered with, by clause 24 of the bill. The promoters by their notice of objections stated (*inter alia*) that the petitioners had no statutory right to lay or erect wires under or above ground, and that their wires had only been erected by sufferance or consent, and that they had no rights, statutory or proprietary, entitling them to be heard against Part II. of the bill, being merely licensees of the owners or occupiers of the lands or houses to which their wires had been attached at their own risk of removal:

Held, however, that the powers conferred upon the promoters of interfering with the petitioners' property under Part II. of the

bill constituted such an injury as to entitle the petitioners to be heard, and that their *locus standi* should be allowed against the whole of Part II. (comprising a number of clauses dealing with street improvements) on the understanding that the petitioners should only discuss before the Committee on the bill matters arising under Part II. as affecting their property and business, and should not oppose the carrying out of the improvements themselves authorised by Part II.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petitioners do not allege in their petition, nor is it the fact, that any lands or property within the meaning of the Standing Orders of Parliament belonging to them, or in which they are interested, will be taken or interfered with under the powers of the bill; (2) the petitioners do not set forth in their petition nor do they possess any interest which by the rules and practice of Parliament entitles them to be heard against clause 24 of the bill in respect of injury to their business as alleged and set forth in paragraphs 5, 6, 7, and 8 of their petition; (3) the promoters have vested in them and maintain the streets in Edinburgh, and the petitioners have no statutory or other powers to lay or erect wires within the city of Edinburgh under or above ground, and they do not own or possess any underground wires within Edinburgh, and any wires which they allege to be in use for their business are and have been erected on sufferance, or by permission of owners or occupiers of houses, and they may be compelled to remove the same, and no such use will, according to the practice of Parliament, entitle the petitioners to be heard against the bill; (4) the corporation of Edinburgh are opposing a bill in Parliament promoted by the petitioners for the purpose of obtaining compulsory powers over Edinburgh, and the present petition is an attempt to prejudice the promoters in their opposition to the said bill promoted by the petitioners; (5) the petitioners are not entitled to be heard on the allegations in their petition that their business will be injuriously affected; (6) the petitioners do not possess, or at all events they do not show by their petition that they possess, any interest intended to be affected by the bill which entitles them, according to the practice of Parliament, to be heard against it.

Pember, Q.C. (for petitioners): The petitioners are a telephone company carrying on a

very large business as licensees of the post office, and they object to Part II. of the bill which deals with street widenings and other works. We do not object to the street improvements, but these improvements will involve the removal of a number of houses on which our standards carrying the telephone wires are fixed, which are the means of communication across the streets from house to house. By clause 21 protection is given to a great number of classes of persons whose property might be interfered with, such as gas and water undertakers, and persons who, under the Telegraph Act, 1878, may have any pipe or apparatus laid down for telegraphs or other purposes, but we are in this position that our apparatus is all overhead, and therefore this clause affords us no protection, although, *prima facie*, we are as much entitled to protection as any other class of persons. Clause 21 is as follows:—

"In executing any works by this Act authorised, the magistrates and council, may raise, sink, or otherwise alter, the position of any sewer or drain, water-course, water-pipe or gas-pipe belonging to or connected with any building or near to the site of any such work, and also any main sewer, or any other main or pipe laid down or used for carrying a supply of water or gas, and also, subject to the provisions of the Telegraph Act, 1878, any pipe, tube, wire, or apparatus laid down for telegraphic or other purposes, and may remove any other obstruction, causing as little detriment and inconvenience as circumstances admit, and making full compensation for all damage caused by any such alteration." The promoters have served us with notice as persons whose property is going to be affected, but they say now that we have no rights of property interfered with which give us a right to be heard.

The CHAIRMAN: The mere giving of notice is not sufficient to give you a *locus standi*, it is done *ex abundante cautela*.

Pember: We wish to ask the Committee for a supplementary clause, placing our wires in the same category as pipes and wires underground. The promoters have quite mistaken the tenure upon which we hold our right, but for the purpose of *locus standi* it is sufficient for us to show that we have property in a certain position in Edinburgh.

The CHAIRMAN: You are lawfully there?

Pember: Yes; I do not know whether the fact that our standards are fixed to the realty would make us landowners; if it would, then we have an unlimited *locus standi*.

Mr. HEALY: Would not the length of your tenure affect the character of your rights under the Lands Clauses Consolidated Act?

Pember: I do not know, nor can I define, our exact rights, which are somewhat in the nature of an easement. It is sufficient for us that we have embarked our capital in this property, and now the promoters seek by the bill to interfere with us, which they cannot do without an Act of Parliament. It has been decided, in the case of the *Board of Works for the Wandsworth District v. The United Telephone Company, Limited* (L.R. 13 Q.B.D. 904), that a local authority has no power to remove our wires, we being lawfully there.

The CHAIRMAN: If you are lawfully there and cannot be dispossessed by the promoters without the authority of Parliament, you submit you ought to be heard?

Pember: Yes. In all these cases where a *locus standi* is claimed, the question is whether the property of the parties claiming a *locus standi* is being disturbed, or their legal status interfered with. The length of our tenure makes no difference any more than the fact of an occupier holding from year to year would do were he to ask to be heard against a bill affecting his tenancy. If our wires were carried underground, we should have been within clause 24, but as they are carried overhead, we are not within that clause. It may be doubtful whether we are freeholders or leaseholders, but it is certain we are occupiers with most valuable property to protect, not only in our own interests, but in the interests of the public, and I submit that we are entitled to a *locus standi* for that purpose.

Cripps, Q.C. (for promoters): The petitioners have no property affected by the bill in the sense which either entitles them to compensation under the Lands Clauses Consolidation Act, or to be heard before a Committee on the bill. They have no property in the realty upon which the standards for their wires are placed. If we proposed to interfere with a standard or post fixed in soil of which they were the owners, they would be entitled to be heard, but as it is their standards are fixed on houses merely on sufferance and by leave of the owners or occupiers of the houses in whom all rights of ownership are vested, and the rights of the petitioners stand or fall with those of the owners or occupiers of the houses themselves. What the National Telephone company are doing is to put themselves into a position to ask for compensation, which in their present legal condition they are not entitled to. Even if they were owners of an easement, that gives them no right to compensation under the Lands Clauses Act, but they are not even in that category.

Mr. ROUNDELL: Is not compensation a narrow ground to take where a great public interest is concerned?

Cripps: As regards public interest we do not admit that any public interest is involved. There are three poles to be removed.

Pember: The amount of injury is a question of merits for the Committee on the bill.

The CHAIRMAN: So far as my individual view is concerned, I do not regard these people as landowners at all, nor do I regard them as having any lease in the land or any easement in the land; they are mere licensees; but the point you have to meet is this: here they are carrying on a business lawfully, and their wires are in a lawful situation, from which you cannot take them down, and what you are proposing to do by the bill is not to do something which in the ordinary sense might prejudicially affect their wires without touching them, but you are positively going to physically interfere with them and take them down; and the question then is whether that does not give them a reasonable right to be heard?

Cripps: The only right we have to interfere with them arises in this way: we take no power against them, but we take power to deal with the lands; the owners of which have given them certain licences.

Mr. HEALY: Let me put this case. Suppose a man has purchased for five years for a large sum the right to advertise on a building, and suppose the day after he got that right an Act of Parliament was passed destroying the building, do you say he would have no *locus standi*?

Cripps: I should not like to say that he would or would not, it would depend on what the conditions were; but where it is a mere licence, which is the case here, there is no doubt that under the Lands Clauses Consolidation Act he would get no compensation at all. The Lands Clauses Consolidation Act gives very full compensation in some cases; but no doubt a licensee cannot get compensation. Although it is true that the petitioners are licensees of the post office for certain telephone purposes, they are on no different footing as regards *locus standi* to an ordinary trader.

Mr. HEALY: Do you contend that no matter what expense you put this company to, and it is conceivable you might put them to great expense, they are not entitled to ask for a clause for compensation? Take the case of an individual who had expended a large sum of money in putting up posts and wires under licences, where you came for a bill which would authorise you to do something which would cause their removal.

Cripps: I submit that he would have no right to be heard if he had expended money on the same basis and understanding that the petitioners have, namely, that he might be moved away in six months or one month, and had taken the risk of that.

Pember: I might not have any right to object to being moved by my grantor, but I have a right to object to being moved by another person.

Cripps: Take the case of an owner or an occupier being interfered with. I agree with my learned friend that in those cases, however small the injury, the *locus standi* is allowed; but this company have elected for their own purposes not to go to the expense of putting themselves into the position of an owner or occupier, and they must take the risk of that position.

Mr. HEALY: Yes, they must take the risk of their legal position, but are they bound to take the risk of being interfered with by another party?

Cripps: We do not affect their legal position, except that they being licensees, when we became possessed of the property, we should have the same right as the owner would have.

The CHAIRMAN: If we gave the petitioners a *locus standi* what would be the clause or clauses against which they would wish to be heard?

Pember: I should say Part II. It would be understood that I am not going to say that these improvements should not be carried out. My object would be to get protection under clause 24, or to get a special clause for my protection, but I think technically I must have a *locus standi* against Part II., so that I may cross-examine the witnesses to the extent that may be necessary.

Mr. BONHAM-CARTER: Part. II. comprises 25 clauses.

Pember: It does not matter much. I will not waste your time by picking out the clauses. The promoters shall have my distinct assurance that, if I am heard against Part II., it shall only be for the purpose of getting proper protection.

Cripps: I would rather that the Court fixed what clauses my learned friend should be heard against, if he is to be heard at all.

The CHAIRMAN: *Prima facie*, I would have said that the *locus standi* should be allowed against 24 and so much of the preamble as relates thereto; but the difficulty is that it is admitted that the petitioners are not within clause 24, and what they want is to come within it.

Pember: I think my *locus standi* ought to be against Part II., the promoters getting my

assurance that I only want my *locus standi* for my own particular protection.

Cripps : I think it rather wide, but I will take what my learned friend says.

The CHAIRMAN: The *Locus Standi* of the Petitioners is *Disallowed*, except as against Part II. of the bill, and so much of the preamble as relates thereto.

Agents for Petitioners, *Martin & Leslie*.

Agent for Bill, *Beveridge*.

EDINBURGH STREET TRAMWAYS BILL.

Petition of (1) THE EDINBURGH AND DISTRICT WATER TRUST; and (2) THE EDINBURGH AND LEITH CORPORATION GAS COMMISSIONERS.

16th March, 1893.—(*Before Mr. SHIRES WILL, Q.C., M.P., Chairman; Mr. PARKER-SMITH, M.P.; and the Hon. E. CHANDOS-LEIGH, Q.C.*)

Tramways—Construction of Works for Cable Haulage—Gas and Water Companies—Apprehended Injury to Pipes by Special Works in Roadway—Alleged Insufficiency of Protection under Tramways Act, 1870, sect. 30.

Clause 4 of the bill empowered the promoters to construct certain tramways "with all proper rails, plates, tubes, and apparatus, ropes, cables, and wires, engines, works, and conveniences connected therewith." The petitioners were two public bodies supplying gas and water within their respective districts, in which districts the tramways authorised by the bill would be laid. They alleged that the construction of the works for the use of cable haulage on the proposed tramways would involve serious interference with and possible injury to their pipes and mains, chiefly on account of the deeper excavation in the roads necessary for placing the cable under the roadway, and they asked to be heard to obtain the insertion of a special protective clause in the bill. On behalf of the promoters, it was contended that adequate protection was afforded by sect. 30 of the Tramways Act, 1870, which was specially inserted in the Act for the protection of gas and water companies; but the peti-

tioners argued that the section was insufficient where cable haulage was authorised, and, in fact, was framed and passed into law before the employment of cable haulage on tramways was contemplated by the legislature:

Held, that the petitioners were entitled to be heard against clause 4 of the bill, and so much of the preamble as related thereto.

The *locus standi* of the petitioners (1) and (2) was objected to on the following grounds: (1) the petition does not allege or show, nor is it the fact, that any land, house property, right or interest of the petitioners will be or can be taken under the powers of the bill or in consequence of the execution thereof; (2) so far as regards any interference with the petitioners' mains and pipes the petitioners are amply protected by the provisions of the Tramways Act, 1870, which are incorporated in the bill; (3) the construction of tramways as cable tramways does not involve any such difference in the method of construction as to render the clauses in the said Tramways Act insufficient for the protection of the owners of gas or water mains or pipes, or necessitate such works as the petitioners suggest; (4) there is no power in the bill to convert the whole of the tramways of the company into cable or other mechanical power lines, and the petitioners are not entitled to be heard against the bill upon the allegations in the petition in this respect; (5) the petition does not allege or show that the petitioners have, nor have they in fact, any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Beveridge (parliamentary agent for petitioners (1) and (2)): The petitioners claim protection for their mains and pipes against the powers proposed to be conferred by clause 4 of this bill, which authorises the promoters to construct certain tramways in Leith with the necessary apparatus for working them by cable power. Clause 4 is as follows: "Subject to the provisions of this Act the company may make, form, lay down, work, use and maintain the tramways hereinafter described in the lines and according to the levels shown on the deposited plans and sections, and in all respects in accordance with those plans and sections with all proper rails, plates, tubes and apparatus, ropes, cables and wires, engines, works and conveniences connected therewith. The tramways hereinbefore referred to and authorised by this Act will be situate in the county of

Edinburgh and are:" and then follows a description of the proposed tramways. The construction of the tramways, which will be within the district of supply of both the petitioners, will necessitate a great interference with the streets, and also a deeper excavation for a trench in the centre of the roadway will be required, which must cause a considerable disturbance to our existing water and gas mains and pipes. I submit, moreover, that the sect. 30 of the Tramway Act of 1870 is not sufficient to protect our interests. At the date of the passing of that Act tramways were not worked by cable-power, and the Act did not, therefore, provide for this. If the bill passes in its present form, we allege that it may become necessary for us to duplicate our mains. I cite as authorities in my favour the *Brentford and District Tramways Bill*, 1885, on the petition of the *East London and Grand Junction Waterworks Companies* (Rickards & Michael, 6), and the *Tramways Provisional Orders Confirmation Bill* (No. 2) (*Bristol Tramways Extension Order*), 1891, on the petition of the *Bristol Waterworks Company* (Rickards & Saunders, 160), where a clause was inserted for the protection of the petitioners. I submit that as the general Act does not contemplate the case of cable tramways, and affords insufficient protection in such cases, that we are entitled to a *locus standi* to ask Parliament for a clause for our protection similar to that which was given in the Bristol case.

Frere (parliamentary agent for the promoters): I submit that the petitioners are not entitled to be heard. The case of the *Brentford and District Tramways Bill* which has been cited is not relevant, for it was a bill for the widening of a bridge, and the Tramways Act did not apply to that, and in the Bristol case the clause was agreed, and there was no decision of the Court; it is not, therefore, any authority for a *locus standi*. The principle upon which a *locus standi* is allowed in an ordinary tramway case was decided in the *Lea Bridge, Leyton and Walthamstow Tramways Bill*, 1881, on the petition of the East London waterworks company (3 Clifford & Rickards, 72).

The CHAIRMAN: That was not a cable case.

Frere: No; and I submit that there is no difference as regards protection between a cable case and the case of an ordinary tramway. In making an ordinary tramway, it is necessary to excavate, and it is this excavation which clause 30 of the Tramways Act, 1870, contemplates, and the excavation necessary for a cable tramway is only about nine inches more than that required for an ordinary tramway.

Sect. 30 of the Tramways Act, 1870, provides as follows: "For the purpose of making, forming, laying down, maintaining, repairing, or renewing any of their tramways, the promoters may, from time to time, where and as far as it is necessary, or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connection with the same, alter the position of any mains or pipes for the supply of gas or water, or any tube, wires, or apparatus for telegraphic or other purposes, subject to the provisions of this Act, and also subject to the following restrictions;" and then follow sub-sects. 1—5, containing provisions for the superintendence of all work connected with the tramways by the parties to whom the mains and pipes belong, and a number of restrictions for their protection, including (sub-sect. 2) the substitution of other pipes for gas and water supply for those removed or disturbed, so as not to interfere with the continuance of the supply of gas and water.

The CHAIRMAN: Is it the practice in bills authorising cable lines to define how deep the excavation shall be?

Frere: No.

The CHAIRMAN: Then you would have a discretion.

Frere: Yes, that is so; but there need be no difference between the two. It is merely a question of the depth the excavation has to go, and the general Act clearly contemplated that there might be an interference with the mains and pipes of gas and water companies, and I submit that sect. 30 of the Tramways Act provides for all such interference no matter whether by an ordinary tramway or by a cable tramway.

The CHAIRMAN: The petitioners allege that in consequence of cables being laid in the streets it may become necessary to duplicate some of the mains, but the general Act does not say who is to bear the expense of duplication if necessary, therefore it would fall upon the gas or water company.

Frere: If duplication became necessary it would be an alteration of these mains and pipes, which, under the bill, we should have to make and pay for, but I am prepared to prove that there is no more necessity for duplicating the mains in the case of a cable tramway than in the case of an ordinary tramway, and in any case the *locus standi* ought to be limited to clause 4.

The CHAIRMAN: We cannot go into the engineering question whether a cable makes a difference or not. It is alleged that it does and that it may cause duplication to become

necessary, and as it is not clear to the Court that the general Act meets the case, we *Allow* the *Locus Standi* of both Petitioners against clause 4, and so much of the preamble as relates thereto.

Agent for Petitioners (1) and (2), *Beveridge*.

Agents for the Bill, *Rees & Frere*.

FISHGUARD BAY RAILWAY AND PIER BILL. [H. L.]

Petition of JOSEPH OKELL.

9th June, 1893.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. PARKER-SMITH, M.P.; Mr. BOUNDELL, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Construction of Railway—Running Powers over Authorised Railway—Contractor for Construction of Authorised Railway—Allotment of Shares and Debentures on Completion of Contract—Alleged Injury by Exercise of Running Powers—Contingent Interest in Company—S. O. 132 (Dissenting Shareholders to be heard.)

The bill incorporated a company for the construction of a railway with a pier and breakwater in connection therewith at Fishguard bay. The proposed railway, which was rather less than a mile in length, commenced by a junction with the authorised railway of the North Pembroke-shire railway, and clause 47 of the bill empowered the promoters to run, work, and use the whole of the railways (twelve miles in length) authorised by the North Pembroke-shire and Fishguard Railway Act, 1892, upon terms to be settled under clause 48 of the bill. The petitioner was the contractor for the construction of the North Pembroke-shire and Fishguard railway under a contract made in 1892, by which he was, on the completion of the railway, to receive the whole of the share capital unissued at the date of the contract, amounting to thirteen-sixteenths of the whole authorised share capital and all the debentures of the company, about

half of the railway being at the present time completed. The petitioner claimed to be heard against clauses 47 and 48 of the bill, on the ground that the running powers conferred by them would interfere with the working of the North Pembroke-shire and Fishguard railway, and be detrimental to the interests of the company in which he would, on the completion of the railway, become so largely interested both as a shareholder and a creditor. He was also the owner of other shares in the company, but they had not been registered in his name, and he had therefore not received notice of the meeting of the company at which the powers of the bill affecting the railway had been approved. It was objected that, under these circumstances, the petitioner could not be heard as a dissenting shareholder under S. O. 132, and that it would be impossible for him to complete the railway within the time limited for its construction by the North Pembroke-shire and Fishguard Railway Act, 1892, in which case he would not receive the shares and debentures as provided by his contract, part of the interest in which he had already parted with to a sub-contractor:

Held, however, that although the bill had been approved by the North Pembroke-shire, &c., company, the petitioner's interests in that company were of such a character as to entitle him to be heard against clauses 47 and 48 of the bill conferring running powers over the company's railway upon the promoters.

[*Avonmouth and South Wales Junction Railway Bill*, 1884, on the petition of Charles Waring and others (3 Clifford & Rickards, 365); and *London and St. Katherine's, &c., Docks Bill*, 1888, on the petition of Messrs. Kirk and Randall (Rickards & Michael, 216) cited and followed.]

The *locus standi* of the petitioner was objected to on the following grounds: (1) the bill does not contain any provision for taking any lands or houses or property of the petitioner, nor is he injuriously affected by the bill; (2) the railway over which running powers are sought by the bill and which powers are objected to by

the petitioner are the property of the North Pembrokeshire and Fishguard railway company. That company have not only not petitioned against the bill, but they have passed a resolution approving of the bill; (3) the petitioner is not even a shareholder in the North Pembrokeshire and Fishguard railway company, and if he has a contract with that company (as he alleges) he has his remedy under that contract; (4) the petition does not disclose, nor is it the fact, that the petitioner has any such interest in the objects or provisions of the bill, or that his property or rights will be interfered with by the powers proposed to be conferred in such manner as to entitle him, according to the practice of Parliament, to be heard on his said petition.

J. D. Fitzgerald (for petitioner): This is a bill to incorporate a company to construct a pier at Fishguard bay, and to make a railway seven furlongs and four chains in length in connection with it, commencing by a junction with an authorised railway now in course of construction called the North Pembrokeshire and Fishguard railway, which is about twelve miles in length. By clause 47 of the bill, compulsory powers are given to the promoters to run over, work, and use the North Pembrokeshire and Fishguard railway, which railway has a junction with the Great Western railway, and by this means runs down to Fishguard, and clause 48 provides for the terms upon which the powers conferred by clause 47 are to be exercised. The petitioner is the contractor for the North Pembrokeshire and Fishguard railway, which was authorised by the North Pembrokeshire and Fishguard Railway Act, 1878. In 1892, the time for making the railway having expired and only two miles having been completed, a bill was promoted in Parliament and passed to revive the powers for making the railway, and during the progress of this bill the petitioner came to an agreement with the promoters under which he was to construct the line, and for which he was to receive the whole of the share capital of the company, which was then unissued, and the whole of the debentures. The authorised share capital of the company was then, and still is, £162,000, of which only £11,000 had been issued. The debentures under the Acts of the company amount to £54,000. The position of the petitioner, therefore, is that on the completion of the twelve miles of railway, of which nine miles are now completed, he is entitled to $\frac{1}{10}$ ths of the share capital, and to the whole of the debentures, and has therefore a greater interest in the company than all the other shareholders together, and he alleges

that it will be impossible if the running powers proposed to be given by this bill are granted to work the North Pembrokeshire and Fishguard railway in a manner satisfactory to the public and the shareholders. The petitioner has also a present interest in the company, for he has purchased £2,200 of shares out of £11,000 of shares issued, but though he sent these to the secretary of the company with the transfer for registration six months ago, he has never been registered as a shareholder and did not receive a notice of the meeting called for the purpose of considering this bill, so that it was impossible for him to dissent at the meeting of the company which was called to consider the bill.

Mr. HEALY: Is it clear that the petitioner could compel the registration of these shares?

Fitzgerald: Yes, by going to the Court of Chancery for a mandamus for the purpose. I submit that as the petitioner is the real owner of the property represented by the North Pembrokeshire and Fishguard company he ought to be heard against the bill though the nominal owners have assented to it. In support of my contention I cite the case of the *Avonmouth and South Wales Junction Railway Bill*, 1884, on the petition of *Charles Waring and others* (3 Clifford & Rickards, 365), in which the petitioners were heard apart from the company, and the case of the *London and St. Katherine's and East and West India Docks Bill*, 1888, on the petition of *Messrs. Kirk and Randall* (Rickards & Michael, 216), where a *locus standi* was granted to petitioners who, though not creditors at the time, would nevertheless in the ordinary course of things shortly become so. I submit that there is nothing to distinguish those cases from the present case, and that the interest of the petitioner being a real interest he ought to have a *locus standi* against clauses 47 and 48 of the bill.

Baker (parliamentary agent for promoters): The petitioner, who is the contractor for the North Pembrokeshire and Fishguard railway, has sub-let his contract, and is at present in default of his payments to the sub-contractor, and, moreover, he has only actually completed five miles of the line, although he may have commenced work on a further length of railway; and it is impossible for him to complete the remainder in the time limited by his contract, and if he does not complete his contract he never will be entitled to these shares. In addition to this he has transferred half his interest in that contract to the promoters.

Mr. HEALY: Do you contend that the petitioner has forfeited all rights in respect of the five miles because he is in default with the remainder?

Baker: No, but we say that the running powers proposed to be conferred by this bill will be absolutely useless, because there will be the intervening piece of land, over which the railway cannot be made, as before it can be completed, the powers for making it will have expired. The company have not petitioned against the bill, and the only way in which the petitioner would have a right to a *locus standi* would be as a dissentient shareholder under S. O. 132. But he did not attend the meeting, and did not dissent.

J. D. Fitzgerald: He had no opportunity of doing so, as he never received notice of the meeting.

Sir GEORGE RUSSELL: The fact remains that the petitioner would become a creditor of the company as a debenture holder, or the happening of a particular event, namely, the completion of the railway, which it is his interest should happen. It cannot be supposed he would be willing to forego all the advantages of his contract after completing a large portion of the railway.

The *CHAIRMAN*: The Court thinks that the petitioner is entitled on the strength of the authorities cited to a *locus standi*, to the extent indicated in the *London and St. Katherine's, &c., Dock* case, that is to say, against clauses 47 and 48 of the bill, and so much of the preamble as relates thereto.

Sir GEORGE RUSSELL: I was not a member of the Court when the decision was given in the *St. Katherine's Dock* case, but in applying that decision to this case I should like to qualify it to this extent, that so far as I am concerned my judgment proceeds on this ground, that where you have, as in this case and in the *St. Katherine's Dock* case, an event as yet undetermined, it is only common justice that we should view the result as likely to be in favour of the petitioner. It would be a manifest injustice to shut him out and thus, as it were, prejudice the case against him.

Locus Standi Disallowed, except as against clauses 47 and 48 of the bill, and so much of the preamble as relates thereto.

Agents for Petitioner, *Fowler & Co.*

Agent for Bill, *C. E. Baker.*

FLEETWOOD IMPROVEMENT BILL.

Petition of *RICHARD EDMONDSON.*

20th April, 1893.—(Before *Mr. SHIRESS WILL, Q.C., M.P., Chairman*; *Sir GEORGE RUSSELL, M.P.*; *Mr. ROUNDELL, M.P.*; *Mr. HEALY, M.P.*; *The Hon. E. CHANDOS-LEIGH, Q.C.*; and *Mr. BONHAM-CARTER.*)

Establishment of Ferry—Power to Owners of Boats to use Landing-Stage—Pier-owner—Power to levy Rates on Owners of Pleasure boats for use of Pier—Existing Competition—Bye-laws for use of Foreshore—Alleged Interference with Foreshore Rights of Petitioner—Protective Clauses.

The bill, *inter alia*, authorised the Fleetwood Improvement Commissioners to establish and regulate a ferry across the river Wyre and, by clause 20, to permit any landing place or other work constructed by them to be used by vessels and boats for landing and embarking passengers and goods upon terms and conditions to be prescribed by the Commissioners; and clause 58 of the bill empowered the Commissioners to make bye-laws specially regulating the erection of booths, &c., on the foreshore and generally the user of the foreshore, by the public. The petitioner had in the previous year obtained parliamentary powers by the Fleetwood Pier Order, 1892, to establish and regulate a pier with landing-stages upon the foreshore on the Fleetwood side of the river Wyre, with power to levy rates prescribed by the Order upon passengers embarking and disembarking at the pier from yachts and other pleasure boats. The petitioner claimed to be heard against clause 20 of the bill, on the ground of competition, and against clause 58 as affecting his rights as the owner of the part of the foreshore upon which his pier was erected, and upon the ground that he ought to be heard as to the passing of any bye-laws which might injuriously affect his use of the pier and a pavilion and winter garden erected on it as a pleasure resort. It appeared, however, that the Improvement Commissioners already owned a ferry-slip on the Fleetwood side of the river Wyre, at which they

allowed the owners of boats of all descriptions under licence from them to embark and disembark passengers, and that no further works in connection with the ferry-slip were authorised by the bill, the works authorised consisting of an approach road and landing-stage on the opposite side of the river, where there was already a landing-place for boats conveying passengers across the river to and from the existing ferry-slip:

The Court *held*, that at the most the bill would improve an existing competition, and disallowed the *locus standi* of the petitioner against clause 20 of the bill on the ground of competition; while, with reference to petitioner's claim to be heard against clause 58 of the bill relating to bye-laws, it was pointed out that clause 64 of the bill expressly saved the rights of owners of the foreshore, and the Court also disallowed the *locus standi* of the petitioner against this clause.

The *locus standi* of the petitioner was objected to on the following grounds: (1) the power sought by clause 20 of the bill and complained of in the petition is not such a power and will not affect the petitioner in such manner as, according to the practice of Parliament, entitles him to be heard against the bill; (2) the ground of objection to clause 58 of the bill is apparently based on the erroneous assumption that by that clause power is sought to permit certain matters and things on the foreshore or sands therein mentioned, but no such power is sought by the clause, but only power to make bye-laws for regulating the user of the foreshore and sands for certain purposes and for the preservation of order and good conduct among persons frequenting the same; (3) no rights of the petitioner (if he has any which the promoters do not admit) in or over the foreshore will or can be interfered with or affected in any way whatever—the rights of all persons in, over or under the foreshore or sands or any part thereof are expressly saved by clause 64 of the bill; (4) the petitioner is not entitled to be heard against the bill with reference to the financial arrangements for the construction and maintenance of the ferry scheme, or on the grounds that it would not be for the benefit of the ratepayers, or that it would interfere with the navigation of the river Wyre, or with the rights of the conserva-

tors of the river Wyre, or that it would occasion financial loss to the ratepayers, and the allegations in the petition relating to those matters are wholly unfounded; (5) no powers are contained in the bill under which any property belonging to the petitioner, or in which he has an interest, will or can be taken or interfered with, or any rights of his prejudicially affected, and he has not and his petition does not allege or show that he has any such interest in the objects of the bill as, according to the practice of Parliament, entitles him to be heard against it on any of the grounds specified in his petition.

R. Edmondson (appearing in person): I claim a *locus standi* against clauses 20 and 58 of the bill, which are as follows: Clause 20. "The Commissioners may, if they think fit, from time to time, but so as not to interfere with the use of the ferry by this Act authorised or the vessels or boats used for the purposes thereof, permit any landing-place or other work or convenience constructed or provided by the Commissioners as part of or in connection with the ferry works to be used by vessels or boats (other than vessels or boats used for the purposes of the ferry by this Act authorised) and for the landing and embarking of passengers, animals, vehicles, and goods from or on vessels or boats (other than vessels or boats used for the purposes of the said ferry) upon such reasonable terms, and subject to such reasonable conditions as the Commissioners may from time to time prescribe, and the Commissioners may from time to time revoke any such permission." Clause 58. "The Commissioners may from time to time make bye-laws for all or any of the following purposes (that is to say):—For regulating the erection or placing on the foreshore and sands within or in front of the district or the approaches thereto or any part or parts thereof of any booths, tents, sheds, stands, stalls, shows, exhibitions, swings, roundabouts, or other erections, vans, photographic carts or other vehicles, and the playing of any games on the said foreshore and sands which, in the opinion of Commissioners, may be a cause of danger, obstruction, nuisance, or annoyance and generally for regulating the user for such purposes, as shall be prescribed by the bye-laws of the said foreshore and sands, or any part thereof; for regulating the selling and hawking of any article, commodity or thing on the foreshore and sands; for the preservation of order and good conduct among persons frequenting the foreshore and sands. Provided that no bye-laws to be made under the provisions of this section shall extend or apply to

any railways, docks, piers, lands or property belonging or leased to or occupied by the Lancashire and Yorkshire railway company, and the London and North Western railway company or either of those companies." I object to clause 20 on the ground of competition. Last year I obtained a Provisional Order, which received parliamentary sanction, as the Fleetwood Pier Order, 1892, enabling me to construct a pier on the foreshore at Fleetwood, with a pavilion and winter garden, and to make landing-stages, for the use of which I am empowered to levy the rates set forth in the schedule to the Order. This power to levy rates is by the Order and in consequence of an agreement with the Improvement Commissioners confined to persons embarking and disembarking from pleasure boats. The Commissioners consented to my obtaining the Order, and they now, by clause 20 of the bill, propose to introduce a new competition with me by using their ferry works for other than ferry boats, viz., vessels and boats of all descriptions, and in effect to establish a competitive pier and thus prejudicially affect the scheme which I have been authorised to carry out and on which I am about to spend the sum of £100,000. I, therefore, ask for a *locus standi* against this clause to ensure that the rights I have obtained under the Provisional Order may be protected. I ask also, for a *locus standi* against clause 58 of the bill under which it is proposed to enable the Commissioners to make bye-laws as to the user of the foreshore and sands. By a resolution of the Commissioners, and, also, by a resolution of a town's meeting, part of the foreshore was granted to me for the purpose of erecting a pier, subject to a ground rent, and on the completion of the pier works this foreshore, on which they are constructed, becomes absolutely vested in me. I, therefore, ask to have a voice in the framing of these bye-laws to see that my rights are protected and to see that the Commissioners do not have the power to allow any user of the sands which might have the effect of causing my pier and winter garden to be less frequented than it otherwise would be.

The CHAIRMAN: You must trust your municipal authority to do what is right. You cannot as pier owner have a voice in the framing of bye-laws by that authority.

Bidder, Q.C. (for promoters): The petitioners' rights are expressly saved by clause 64 of the bill, which is as follows: "Nothing in this part of this Act shall be deemed or taken to prejudice, diminish, alter, or affect any estates, rights, titles, privileges, powers or authorities in,

over or under the foreshore or sands within or in front of the district or any part thereof of the owners or owner for the time being of such foreshore or sands, or of any persons claiming under them or him."

Mr. HEALY: Is there anything in that clause which would enable bye-laws to be made which would interfere with the user of your pier by the petitioners?

Edmondson: Not as to the superstructure, but it would enable the Commissioners to make bye-laws interfering with that portion of the foreshore upon which the pier stands, and they might permit the user of the foreshore in such a way as to be an annoyance to persons using my pier, and I submit that where there is an apprehended nuisance, the Court will grant a *locus standi*.

The CHAIRMAN: I do not think we need hear the promoters on the second point raised by the petitioner, viz., as to the bye-laws under clause 58 of the bill.

Bidder (in reply): I will deal with the petitioner's claim to a *locus standi* against clause 20 of the bill. He bases it on competition, and that being so, it is discretionary for the Court to grant it, or not, taking into consideration whether the competition is substantial or the reverse, or a new competition, or the mere development of existing competition. We are taking powers for the purpose of improving ferry accommodation, which already exists. There are on both sides of the river landing-places, now used for the purpose of ferrying people across the river. On the Fleetwood side upon which this proposed pier is to be constructed, we have a ferry-slip, and on the other side there is a breakwater, belonging to and under the control of two railway companies, named in clause 58 of the bill, who are also the conservators of the river Wyre, and the bill empowers the Commissioners to make a road alongside this breakwater and that is all, by arrangement with the railway companies. The access on the Fleetwood side will, as a matter of fact, be improved by making a ferry dock, accessible at high tide, where we have at present a ferry-slip, but this is not dealt with by the bill. At the present time we allow boats to land and embark passengers at our ferry-slip, and on the other side the railway companies allow the owners of boats to land passengers on their breakwater, and by clause 20, we merely take powers to authorise the Commissioners to do in respect of their new works that which is actually being done at the present time. Inasmuch as at present we have the power, which we are exercising, of authorising boats,

under licence from us, to land and embark passengers on the Fleetwood side, and we are constructing no ferry works on the Fleetwood side, and the only effect of the bill will be to improve the access to the railway companies' landing stage on the far side of the river.

The CHAIRMAN: We need not hear you any further, we think no grounds for a *locus standi* have been disclosed.

Locus Standi Disallowed.

Agent for the Petitioner, *Walker.*

Agent for the Bill, *Ball.*

GLASGOW, YOKER AND CLYDEBANK RAILWAY BILL.

Petition of THE CORPORATION OF GLASGOW.

9th March, 1893.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman., ETC., ETC.)

The petition against the bill was withdrawn.

Agent for Petitioners, *Malcolm.*

Agents for Bill, *Wm. Robertson & Co.*

GREAT NORTH OF SCOTLAND RAILWAY BILL.

Petition of THE CORPORATION OF ABERDEEN.

2nd March, 1893.—(Before Mr. SHIRESS WILL, Q.C., M.P.; Mr. ROUNDELL, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Railway Company—Construction of Reservoir and Aqueduct—Impounding of Stream—Supply to Joint Railway Station—Municipal Corporation Supplying Water to Burgh—Invasion of District of Supply.

Clauses 5 and 15 of the bill empowered the promoters, the Great North of Scotland railway company, to construct a reservoir and an aqueduct therefrom to a point on their railway and to impound the waters of the Elrick burn. The promoters, besides having a station of their own at Aberdeen, were the joint owners with the Caledonian railway company of a large station there, to which the North British

railway company also were, by agreement, to be shortly admitted; and although the bill conferred no powers to supply or charge for water, the promoters admitted that they contemplated giving a supply of water to the joint station. The corporation of Aberdeen claimed to be heard against the bill as being an infringement of their rights and authorising an invasion of their district, inasmuch as the water undertaking of the city was vested in them and they supplied its inhabitants with water for both domestic and trade purposes, including the railway companies using the joint station:

Held, that as the bill conferred parliamentary powers upon the promoters, which would enable them to supply water within the petitioners' district of supply, the petitioners were entitled to be heard against it.

The *locus standi* of the petitioners was objected to on the following grounds, viz.: (1) the petition does not allege, nor is it the fact, that any lands or property of the petitioners can be taken under the powers of the bill; (2) those provisions of the bill which are referred to in the petition would authorise only the construction of a reservoir and aqueduct for bringing water to and along the railway of the promoters and to their station, and do not confer on the promoters any general powers for the supply of water, or to charge for the supply of water; (3) the bill does not authorise the sale by the company of water to any other companies or persons, and in so far as it may enable them to use the water or permit the water to be used on the station and railway premises, it does not involve any interference with any rights of the petitioners to such an extent as to entitle them to be heard against the bill; (4) the petition does not disclose, nor is it the fact, that the petitioners have any such interest in the subject matter, or that their property or rights will be interfered with by the powers proposed to be conferred in such manner as to entitle them, according to the practice of Parliament, to be heard on their said petition.

Pember, Q.C. (for the petitioners): Clause 5 of the bill proposes to give the railway company power to construct a reservoir and to bring an aqueduct or line of pipes up to a point on their railway embankment, and by clause 15 to im-

pound the waters of the Elrick burn. The town of Aberdeen is at present served by three or four railway companies, including the railway of the promoters and the Caledonian railway company. These two companies have a joint station, which they own and use equally between them, and to which they are shortly about to admit the North British railway company, and in addition there is a station belonging exclusively to the Great North of Scotland company. The manager of the Great North of Scotland company has admitted in correspondence with the town clerk that the company means to supply this joint station, where there is at present a very large consumption of water, which will be increased by the admission of the North British company to the station, and therefore the value of their custom to the Aberdeen corporation, who are owners of the waterworks that supply the town, is very considerable. The obvious intention of the promoters of this bill is to bring the water along the embankment to their stations at Aberdeen, and there make use of it for themselves and for the other railway companies. The petitioners therefore submit that they are entitled as the local authority supplying water in the district to be heard against this competition and invasion of their district of supply. Even if the promoters intended to supply themselves alone we submit that we should be entitled to a *locus standi* in order to ask the Committee not to allow a railway company to get statutory powers to do what would damage us, and what they could not do without statutory powers; but as this water is for the use of other railway companies, as well as for the use of the promoters, we submit that we are clearly entitled to be heard against the principle of the bill.

The CHAIRMAN: We will now hear the promoters.

Cripps, Q.C. (for promoters): We take powers under this bill to get water but not to supply it, and therefore we do not infringe the statutory rights of the corporation. We do not ask for any power to supply the Caledonian company, although I do not deny that we hope to supply them.

The CHAIRMAN: You are coming to ask Parliament to enable you to do something which you are not entitled to do, namely, to construct a reservoir and aqueduct, and to impound certain waters. I take it the strong point in your argument would be that the Great North of Scotland company could at present supply themselves by sinking a well, and the corporation could not hinder them doing that. The answer to that is this, that the company are

not doing something which they are at present entitled to do, but are coming to Parliament to enable them to do something which they are not entitled to do as a railway company to do, and that makes all the difference. The company are coming to ask the assistance of Parliament, in fact, to invade the district of the corporation.

Cripps: If that is the view you take I will not argue it any longer.

The CHAIRMAN: We think the corporation of Aberdeen have a *locus standi*.

Locus Standi Allowed.

Agents for Petitioners, *Martin & Leslie*.

Agents for Bill, *Dyson & Co.*

GREENOCK CORPORATION BILL.

PETITION OF (1) THE CLYDE NAVIGATION TRUSTEES; AND (2) THE CORPORATION OF GLASGOW.

5th May, 1893.—(Before Mr. SHIRESS WILL Q.C., M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. ROUNDELL, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Burgh Improvement — Abatement of Smoke Nuisance within Port — Navigation Trustees and Municipal Corporation — Board of Police — Infectious Cases on Board Ships within Port — Expenses of Treatment as Affecting Shipping Interests — Establishment of Cattle Depot — Competition — Public Health (Scotland) Act, 1867, ss. 52, 54 — Contagious Diseases (Animals) Act, 1878, s. 39 — Burgh Police (Scotland) Act, 1892, s. 384 — S. O. 134 [Municipal Authorities and Inhabitants of Towns].

This was a bill to extend the boundaries of the burgh of Greenock and to confer further powers on the corporation acting for municipal purposes, and as the board of police of the burgh. Clause 37 of the bill provided for the prevention of nuisance arising from smoke within the burgh, and its operation was by the latter part of the clause extended so as to apply to any person in charge of a steamer lying at any of the quays, piers, or wharves, or in any of the harbours or docks of the ports and harbours of Greenock, or plying in the Firth of Clyde, within one mile of any of the said quays, piers, wharves, docks,

harbours, or of any house or building within the burgh. Both petitioners (1 and 2) claimed to be heard against the clause, the Clyde Navigation trustees objecting that as the fairway, along which large steamers passed in coming to Glasgow up the Clyde, was within the limit (one mile) prescribed by the clause, the enforcement of the provisions of the clause against such steamers might result in hindering their passage, and thereby injure the trade of the Clyde and their own interests as trustees of the navigation; while the corporation of Glasgow objected to the clause as interfering with their police jurisdiction over the Clyde, which had been specially reserved by the Greenock Police Act, 1877, under which the corporation of Greenock exercised their present police jurisdiction over the Clyde. *Contra*, the promoters contended that they had, under sect. 384 of the Burgh Police (Scotland) Act, 1892, similar powers for police purposes and for the prevention of smoke nuisance within their limits, which limits were, by the Greenock Police Act, 1877, defined to extend 1,700 yards into the Clyde, and that the alteration effected by clause 37 was too trifling to entitle the petitioners to be heard against it:

Held, however, that both the petitioners (1 and 2) were entitled to be heard against the clause.

Clause 70 of the bill contained provisions for dealing with persons affected with infectious diseases on board any ship lying within or opposite to the burgh of Greenock in the Firth of Clyde, and subsection 4 of the clause provided for the recovery of the expenses incurred by the board of police in dealing with such cases from the master or officer in charge of such ship. A *locus standi* against this clause, and clause 71 (as to contribution towards hospitals for such cases from various local authorities) was conceded to (2) the corporation of Glasgow as a sanitary authority, but (1) the Clyde trustees also claimed to be heard against the former clause (70), on the ground that it imposed a charge upon ships frequenting the Clyde,

which might injuriously affect the trade frequenting the ports on the Clyde, and so affect their interest and revenue. The promoters contended that the powers they already possessed under the Public Health (Scotland) Act, 1867 (sects. 52 and 54) with reference to ships having on board persons affected with infectious diseases were practically the same as those contained in clause 70 of the bill, and that the Clyde trustees were not entitled to be heard to represent the interests of shipowners, even if they should be affected by the provisions of clause 70:

Held, however, that inasmuch as clause 70 varied and extended the provisions of the Public Health (Scotland) Act, 1867, relating to the same matter, the Clyde trustees were entitled to be heard against it.

Clause 87 of the bill empowered the board of police of Greenock to establish a *dépôt* for cattle within the burgh of Greenock. A *locus standi* was claimed against the clause by both petitioners (1 and 2) on the ground of competition with an existing cattle *dépôt* at Glasgow which had been erected at the joint expense and co-operation of the Clyde trustees and the corporation of Glasgow, who were both interested in their respective capacities in the trade and revenue derived from it. On behalf of the promoters it was pointed out that the object of the clause was to enable the corporation to construct the cattle *dépôt* in their capacity as the board of police, and to enable them to raise the money for the purpose on the security of the police rate, which would also be charged with its maintenance instead of the local rates, which would be the case if they (the corporation) were to construct the *dépôt* in their municipal capacity, which they were fully empowered to do by the provisions of the Contagious Diseases (Animals) Act, 1878.

Held that, as clause 87 of the bill only conferred upon the corporation as the board of police the same powers to erect a cattle *dépôt* as they already possessed in their capacity as a sanitary authority under the Contagious Diseases (Animals) Act, 1878,

the interests of the petitioners in respect of the existing cattle depôt at Glasgow were not affected in such a manner as to entitle either of them to be heard against the clause.

The *locus standi* of (1) the Clyde Trustees was objected to on the following grounds: (1) no lands, rights, or property of the petitioners are proposed to be taken, interfered with, or affected by the bill; (2) the petitioners are a statutory body, and their jurisdiction under the Clyde Navigation Acts is limited to the harbour of Glasgow and that portion of the river Clyde defined by the Clyde Navigation Consolidation Act, 1858, none of which is included in the portion of the Clyde affected by the bill; (3) the petitioners have no legal right in that portion of the river affected by the bill which is vested in the trustees of the Clyde lighthouses and in the Greenock harbour trustees, and over which the board of police of Greenock have jurisdiction under the Greenock Police Act, 1877; (4) even if the petitioners would have been entitled, had not the Clyde Lighthouses Act, 1871, been passed to be heard in connection with any interference with the portion of the Clyde below the limits of their jurisdiction, they are as constituents since the passing of that Act represented by the trustees of the Clyde lighthouses, and are not entitled to be heard against the bill which the trustees do not oppose; (5) the petitioners have no right to be heard as regards the proposed contribution to the expenses incurred by the promoters in connection with the treatment of infectious cases on board vessels or any hospitals established or provided by the promoters for the treatment of such cases from the local authorities of certain burghs and places, and, *inter alia*, of Glasgow, Partick, Govan, Dalmuir, and Bowling, as the petitioners are represented by the local authorities of those burghs and places; (6) the proposed cattle depôt, mentioned in paragraph 13 of the petition, is a depôt in which the petitioners have no interest whatever, being intended to accommodate local requirements and serve public wants; (7) the petitioners have no such interest in the objects of the bill as entitle them to be heard.

The *locus standi* of (2) the corporation of Glasgow was objected to on the following grounds: (1) the petition does not allege, nor is it the fact, that any lands or property of the petitioners can be taken compulsorily under the powers of the bill; (2) the promoters admit the right of the petitioners to be heard against

clauses 70 and 71 of the bill, but they deny the right of the petitioners to be heard against any other provisions of, or powers sought by, the bill; (3) the paragraphs of the petition numbered 10 and 11, the accuracy of which the petitioners do not admit, are not such as entitle the petitioners to be heard against clause 87 of the bill. The alleged competition for the foreign cattle traffic of the Firth of Clyde is too remote, and is not of a character to entitle them to be heard against the establishment by the promoters of the proposed depôt for cattle; (4) the promoters make no admission in regard to any claim by the petitioners of a right to manage and control the police or to guard the navigation of the portion of the river Clyde referred to in paragraph 13 of the petition, but allege that the bill contains no provisions altering or in any way affecting such right, and that the petitioners are not entitled in respect of such claims to be heard against clauses 37 and 77 of the bill; (5) the petition does not disclose any facts or circumstances which, according to practice, entitle the petitioners to be heard (except as hereinbefore admitted) either against the preamble or the clauses of the bill.

Cripps, Q.C. (for petitioners (1)): The petitioners, as trustees of the Clyde navigation are responsible for the navigation to Glasgow, and have spent an enormous sum within the limits of their jurisdiction, and they ask first for a *locus standi* against clause 37 of the bill, which is as follows: "Every person who so uses or causes, or permits or suffers to be used, any furnace or fire (except a household fire) as that smoke issues therefrom, unless he proves that he uses the best practical means for preventing smoke, and has carefully attended to and managed the said furnace or fire so as to prevent, as far as possible, the escape of smoke therefrom, shall be liable to a penalty not exceeding forty shillings in respect of any such act or omission, and to a further penalty not exceeding five pounds in respect of every day or part of a day during which such act or omission continues after the imposition of the first-mentioned penalty, or in respect of every act or omission of a like nature which occurs within one month after such imposition. This enactment shall apply to any person in charge of a steamer lying at any of the quays, piers, or wharves, or in any of the harbours or docks of the ports and harbours of Greenock, or plying in the Firth of Clyde within one mile of any of the said quays, piers, wharves, docks, harbours, or of any house or building within the burgh." Our objection to this clause is, that within the limit therein named lies the

fairway up which all the large steamers go, and we allege that an obstruction may be caused by this clause if steamers are liable to be detained on their way up the Clyde on account of it, and it might be a most serious thing as regards competition between rival ports, and so cause great injury to a navigation such as the Clyde when the chief object in carrying on competition is despatch. We also ask to be heard against clause 70, which deals with ships having on board persons suspected of being affected with infectious diseases, and the particular part which affects us is sub-sect. 4, which provides that "All expenses incurred by the board in removing, treating, or maintaining any such person as aforesaid (including a reasonable allowance in respect of the up keep and management of any hospital belonging to or provided by the board for the treatment of infectious or contagious diseases), or in disinfecting any such ship, shall be paid by the owner or master of such ship or other officer having charge of the same, and may be recovered from such owner, master, or other officer in a summary manner in a Court of Summary Jurisdiction." The shipowners are represented by us, nine of our members being elected by the shipowners, and this is a proposal for the first time to put a charge of this character upon shipowners, and the effect of it would be that a shipowner of a vessel coming to Glasgow would be subjected to a particular charge which is not made in any other port.

The CHAIRMAN: This clause does not seem to apply to ships passing up and down the channel, but only to ships lying within the bounds of the burgh.

Cripps: Yes; but all ships coming into the Clyde having infectious diseases on board have to stop and lie opposite Greenock under the quarantine regulations, and therefore every vessel entering the Clyde, which may have a case of infectious disease on board would come under this sect. 70, and as this sub-sect. 4 imposes a new liability upon ships navigating the Clyde we, as the navigation trustees, are entitled to be heard against it. The next clause against which we ask to be heard is clause 87, which empowers the board of police of Greenock to establish a cattle depôt in the burgh near the harbour at Greenock. This would very much injure the cattle depôt, which has been established in the Clyde, and towards which we have very largely contributed. The corporation of Greenock has already applied to the Privy Council for permission to erect sheds for landing foreign cattle, but their application was refused. We say, therefore, that they ought not to be

allowed to establish a depôt at Greenock, which must cause competition, when there is a proper cattle depôt under our jurisdiction on the Clyde.

Mr. HEALY: Does not this clause dispense with the necessity for the promoters going to the Privy Council for a licence?

Cripps: No, they would have to repeat their application, but under different circumstances, for if the application is repeated after Parliament has sanctioned in principle the reasonableness of the application by giving permissive power, then the application is shewn against it. We also claim to be heard against clause 77 of the bill, which is a clause for amending and extending sect. 128 of the Greenock Police Act, 1877, relating to explosives.

J. D. Fitzgerald (for promoters): I undertake to strike clause 77 out of the bill, but admit the technical right of both the petitioners (1 and 2) to go before the Committee on the bill to see that it is struck out.

Balfour Browne, Q.C. (for petitioners (2)): We also ask for a *locus standi* against clause 37. In 1882 the Greenock corporation came to Parliament for an extension of the burgh for municipal purposes and we were refused a *locus standi* on the ground that it did not affect us, but in the course of that case it appeared that when in 1877 the promoters asked Parliament for police jurisdiction over the 1,700 yards, we had a *locus standi* and obtained a clause in the Greenock Police Act, 1877, reserving all our rights of police supervision over the river. Under a charter of Charles I., dated 1636, our jurisdiction for police purposes extends from Glasgow to the clock lighthouse, which includes the portion of the river opposite Greenock. We should have, therefore, concurrent jurisdiction with the promoters within the limit of a mile as specified in clause 37 of the bill, and we submit that we are entitled to a *locus standi* to see that the reservation as regards police purposes given to us in 1877 is added to this clause, and, moreover, there is clearly a discretion in the Court to grant us a *locus standi* under S. O. 134. It is obvious that anything which injures the navigation of the Clyde would injuriously affect Glasgow, and, therefore, we ought to be heard under S. O. 134. Our *locus standi* is conceded against clauses 70 and 71 of the bill, but we ask also for a *locus standi* against clause 87, and we are practically in the same position as petitioners (1). They have provided the land for the depôt and we have erected it; they receive the whole of the river dues with reference to this traffic, and we receive all the sums paid for the

cattle wharf. We are, therefore, practically partners in this business. The promoters say that the competition we allege for the foreign cattle traffic is too remote, but they are in fact twenty-three miles nearer the entrance from the sea, and therefore the competition with our depôt of the cattle depôt proposed to be constructed at Greenock under clause 87 of the bill will be especially severe.

J. D. Fitzgerald (for promoters): With regard to (1) the Clyde Navigation Trustees, these petitioners have no jurisdiction over this part of the river at all, but it is vested in the Clyde Lighthouse board, who raise no objection to the bill; *Greenock Corporation, &c., Bill*, 1882 (3 Clifford and Rickards, 167). As to the objection to clause 37 under our existing Acts for police purposes, our jurisdiction extends into the river 1,700 yards, and clause 37 therefore will only extend it 60 yards. Under the Burgh Police (Scotland) Act, 1892, we have jurisdiction with regard to smoke anywhere within our limit for police purposes. The object of clause 37 is to include within our jurisdiction vessels sending forth great volumes of smoke, which has become a very great nuisance, and causes the town of Greenock to be constantly obscured by it. The words of sect. 384 of the Burgh Police Act, so far as defining a smoke nuisance are the same as in clause 37 of the bill, and the words extending the effect of the clause to smoke coming from a steamer are almost the same as in clause 37. The only difference being that sect. 384 provides that "this enactment shall apply to any person in charge of a steamer plying on a river or estuary of the sea within the jurisdiction of the magistrates of the burgh."

The CHAIRMAN: By clause 37 you extend the application of sect. 384 of the general Act to the case of steamers "lying at any of the quays, piers, or wharves, or in any of the harbours or docks of the ports and harbours of Greenock," and you extend the limit of your jurisdiction by 60 yards. The difference between the case of the *Greenock Corporation, &c., Bill*, 1882, that you have cited and this case is that the question of hindering the navigation arises in this, and it is suggested that the promoters may make bye-laws which may hinder the passage of ships.

Fitzgerald: Practically the only thing the promoters can do under this bill, which they cannot do under the general Act, is to interfere with the steamer 60 yards further off, and I submit that so slight an alteration cannot be a ground of *locus standi* for the petitioners. The only way in which it is suggested they could be interfered with is

by the possibility of delay caused to steamers in their passage to Glasgow, but as a matter of fact all these steamers stop opposite Greenock, as it is the Customs port, and this is the place where the Custom-house officers board all the steamers coming into the Clyde.

Mr. HEALY: How far from Greenock is the track of the steamers?

Fitzgerald: The navigable channel is close to the shore within the 1,700 yards. With regard to clause 70, I submit that the Clyde trustees are not entitled to a *locus standi* against the clause, for we have already under the Public Health (Scotland) Act, 1867, sect. 52, jurisdiction for all sanitary purposes over any ship coming opposite the port of Greenock, and this clause is only intended to deal with ships lying opposite Greenock, and by sect. 54 of the same Act there is power in cases of infectious disease to make the shipowner liable for medical expenses incurred by persons suffering from infectious disease.

The CHAIRMAN: The words "up keep and management of any hospital" in sub-sect. 4 of clause 70 of the bill are new.

Fitzgerald: Yes; but at the present moment we have no power to disinfect, and if it is done it must be done at the expense of the person who does it.

The CHAIRMAN: The only question is whether the great public trust charged with the duties of maintaining the navigation and protecting its interests ought not to be heard.

Fitzgerald: The *locus standi* of (2) the corporation of Glasgow against clauses 70 and 71 is admitted, because they allege that they have jurisdiction opposite Greenock, and the interests of Glasgow will therefore be considered, but the jurisdiction of the petitioners is not interfered with in any way, as it ends at a point a mile and a-half away. The petitioners do not allege in their petition that they represent the individual interests of the shipowners, and we merely by this clause make the jurisdiction we already possess more effective. With regard to the claim of the corporation of Glasgow to be heard against clause 37 of the bill, they are not entitled to be heard because the clause does not in anyway affect their jurisdiction, all the clause proposes to do is to fine the owner of a steamer improperly emitting smoke within a mile of Greenock, and the petitioners have no jurisdiction under the general Act or any special Act with regard to smoke, they have only jurisdiction for the prevention of offences down the river on ships.

The CHAIRMAN: If they have police jurisdiction are they not in a position to adopt the smoke clause of the Act of 1892?

Fitzgerald : No ; their jurisdiction does not extend to steamers emitting smoke.

Mr. HEALY : Would they have a jurisdiction to make bye-laws ?

Fitzgerald : No. They have no power to deal with any question of smoke on this part of the river, and if they have we do not propose to take it away. All they can allege is that if they have such a power we would have concurrent jurisdiction within this area, but that is no ground for a *locus standi*. Neither of the petitioners (1) or (2) are entitled to be heard against clause 87 for it in no way affects them. There is nothing in this bill to dispense with an order of the Privy Council, and if at any time the corporation of Greenock apply to the Privy Council for an order to land foreign cattle the petitioners will be entitled to represent that some other place upon the Clyde should be adopted for the landing of foreign cattle, and that there is already a cattle dépôt at Glasgow in which they are interested. The harbour trustees of Greenock, and not the Greenock corporation, as has been stated, made an application to the Privy Council, which was refused, and representations were then received from Glasgow. Sect. 36 of the Contagious Diseases (Animals) Act, 1878, provides that the Privy Council shall prescribe the ports at which foreign cattle may be landed, and it is enacted by sect. 39 that " a local authority may provide, erect, and fit up wharves, stations, lairs, sheds, and other places for the landing, reception, keeping, sale, slaughter, or disposal of foreign animals, &c.," and by a subsequent Act, this is extended to animals coming from any port in the United Kingdom besides foreign cattle. The local authority, therefore, has at present power to establish a dépôt for cattle, but that cannot be used without the order of the Privy Council.

Mr. CRANDOS-LEIGH : What do you want this special clause for ?

Fitzgerald : The local authority in this case is the corporation of Greenock, and the corporation has two capacities—it is the municipal corporation and it is the board of police—and for financial reasons it is thought desirable to give the power which actually exists at the present time in the corporation, as the local authority, to the board of police, and to charge the expense to the police assessment, and by clause 103 of the bill, power is given to the board of police to borrow a sum of £10,000 for the purpose of establishing a cattle dépôt. In other words, the corporation of Greenock have power to do what is proposed by this bill *qua* corporation, and they want powers to do it *qua* board of police.

Sir GEORGE RUSSELL : What is the advantage of obtaining power to establish this cattle dépôt through the board of police ?

Fitzgerald : It is this that the cost is charged then on the police assessment. What we want is better financial arrangements with regard to borrowing powers, and this has nothing whatever to do with the corporation of Glasgow.

The CHAIRMAN : If the corporation of Greenock as the municipal authority had exercised the powers they possess under the Contagious Diseases (Animals) Acts, 1878, would not they have been entitled to levy some rate for the purpose of maintaining the dépôt and carrying out their duty under the Act ?

Fitzgerald : Yes, by sect. 46 of the Act, it is provided that the expenses of the local authority shall be defrayed out of the local rates, and such sums as may be necessary to defray these expenses shall be levied as part of the local rate.

Sir GEORGE RUSSELL : The object of constructing dépôts and wharves under the Contagious Diseases Acts was distinct from the object with which the proposed cattle dépôt would be established, which moreover will be in competition with the existing cattle dépôt at Glasgow.

Fitzgerald : The great object under the Act was this, to enable the local authority to establish a dépôt for cattle. No doubt the effect of it is to limit the area in which disease can break out, and though no doubt that is not our object, if we establish a dépôt in Greenock it will limit it in the same way. The petitioners' allegations as to competition does not extend to home cattle, it is directed solely against the importation of foreign cattle, and there is no provision in the bill by which a single head of foreign cattle can be landed at Greenock.

Mr. HEALY : It is plain that you have power at present to establish a dépôt for home cattle and to support that dépôt out of the rates.

Fitzgerald : Yes, we ask for these powers in clause 87 in order to make fresh financial arrangements and neither directly or indirectly does the bill affect the competition as regards foreign cattle.

The CHAIRMAN : As regards petitioners (1) we think that their *Locus Standi* must be limited to clauses 37, 70, and 77, and so much of the preamble as relates thereto ; and that the *Locus Standi* of petitioners (2) must be limited to clauses 37, 70, 71, 77, and so much of the preamble as relates thereto.

Agents for Petitioners (1) and (2), *Martin and Leslie*.

Agents for the Bill, *Durnford & Co.*

HORNSEY LOCAL BOARD BILL.

Petition of (1) OWNERS AND LESSEES OF LANDS, HOUSES, AND OTHER PROPERTY SITUATE IN THE URBAN SANITARY DISTRICT OF HORNSEY, IN THE COUNTY OF MIDDLESEX.

28th April, 1893.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. ROUNDELL, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Local Authority—Bill for Special Powers of Local Government—Sewers and Drains, Streets and Buildings, &c.—Owners and Occupiers of Lands and Houses within District—Representation by Local Authority—Owners, &c., as distinguished from Ratepayers—Injurious Affecting of Property—Increase of Rates—Exceptional Legislation—Public Health Acts, 1875 and 1890.

The bill was one to confer powers on the Hornsey Local Board of Health with regard to local government within their district. It was opposed by certain owners and occupiers of lands and houses within the district, who objected to the bill as providing exceptional legislation with respect to various sanitary and other matters affecting them as owners and occupiers of property, more especially by Parts II. and III. of the bill relating to sewerage and drainage, and building, and the laying out of streets, as to which the petitioners alleged that the bill altered the existing general law provided by the Public Health Acts, and would injuriously affect their property by increased rates and alteration of the incidence of taxation. It was objected on behalf of the promoters (1) that the petitioners were represented by them as the local authority of the district, and could not be heard against a bill promoted by them; (2) that many of the signatories to the petition were not, in fact, owners or occupiers of property; (3) that in any case the petitioners were only entitled to be heard against those provisions of the bill which would specially affect them as owners and occupiers of property injuriously affected by such provisions:

Held, however, that the petitioners were entitled to be heard generally upon their petition against the bill.

The *locus standi* of the petitioners (1) was objected to on the following grounds: (1) the petition does not allege or show, nor is it the fact, that any land, house property, right, or interest of the petitioners will be or can be taken, or so affected under the powers of the bill or in consequence of the exercise thereof, as to entitle the petitioners to be heard against the bill; (2) the petitioners are not entitled to be heard against the common seal of the local board for the district of Hornsey, whom they elect, and who are the promoters of the bill, and the petitioners are represented by the said local board; (3) the petitioners do not represent any particular class of persons or ratepayers affected by the bill, nor have they any interest apart from those of the general body of owners and ratepayers of the district of Hornsey; (4) the bill was duly approved at the statutory meeting of owners and ratepayers held in pursuance of the Borough Funds Act, 1872; (5) the following petitioners have signed another petition against the bill, and are not entitled to be heard, if at all, upon this petition:—William Parker, Alfred L. Sargood, Alfred Putt, Samuel Honey, A. Fox, W. J. Keen, William Piercy, Alfred Fanning, John Davis, Charles Peak, Fredk. Read, Andrew Morton, and James H. Wilson; (6) the petition does not allege or show that the petitioners have, nor have they in fact any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Freeman (for petitioners (1)): The petitioners are about 200 owners and lessees of lands and houses in Hornsey, and they petition against the bill which deals with, amongst other things, in Part II., sewers and drains, in Part III., sanitary provisions, in Part IV., streets, &c., and in Part V., buildings, and in almost every case will affect lands and buildings of which the petitioners are owners and occupiers in a way which is opposed to the existing law, contained in the Public Health Act, 1875, and the Public Health Acts (Amendment Act), 1890, and it proposes to place the petitioners as owners, under pecuniary and other obligations which at the present time they are not liable to. As to nearly every clause in these parts of the bill the petitioners have a personal interest in the matter. We make amongst others the following allegations in our petition: (5) "the property of your petitioners in the district is of considerable extent and value, and comprises

and includes private residences, shops, building land in course of development, and other land available for building purposes, and represents a considerable rateable value; (6) the provisions of the bill, if allowed to become law, will seriously and prejudicially affect the lands, houses, and property of your petitioners in the district, and by imposing on the property or rendering it liable to additional and increased charges and burdens, and interfering with the free dealing therewith and enjoyment thereof, and varying existing legislation relating thereto, will depreciate the value of the property and inflict loss and injury upon your petitioners, for which no adequate compensation is proposed to be or can be afforded under the bill; (7) some of the powers contained in the bill which affect your petitioners' property are in excess of the general law, and your petitioners respectfully submit that no sufficient reasons exist or can be shown for the granting of such powers. Other powers which are sought by the bill are, as your petitioners are advised, either already conferred on the local board by existing legislation or can be obtained by means of bye-laws, and are therefore unnecessary and undesirable and ought not to be granted; (8) amongst other provisions in the bill which will be injurious to your petitioners and impose additional charges, burdens, and restrictions upon them in the enjoyment of and dealing with their property and to which the above objections apply, they beg leave to specify the following—Part II., sewers and drains, clauses 6, 7, 9, 11, 12 and 13; Part III., sanitary provisions, clauses 18 and 20; Part IV., streets, &c., clauses 21, 24, 25, 27, 29, 30, and 32; Part V., buildings, &c., clauses 40, 47, 52, 55, 57, and 58; (9) under some of the provisions of the bill above referred to your petitioners will be compelled to incur the expense of altering existing sewers and drains connected with their property although such sewers and drains have been constructed in accordance with the bye-laws and requirements of the local board, and have been approved by their surveyor. Your petitioners will also be prevented from making sewers or drains in connection with their property as they have done hitherto and compelled to pay the local board the cost of making them, and in some instances before they are actually required; (10) other provisions of the bill above referred to will greatly hamper your petitioners in the laying out of new streets in their property, and may seriously interfere with, if not prevent, the development of their building land; (11) the power sought by the bill of appointing six building inspectors and charging the costs thereof on persons

constructing buildings, would injuriously affect your petitioners and other owners of property in the district, and is as your petitioners submit unnecessary, and the fees to be paid to the local board in the case of construction and alterations of buildings are excessive and ought not to be sanctioned." The main objection to our *locus standi* is that as the promoters are the local authority for the district and are proposing measures for dealing with the management of their district, we have no right to be heard against the common seal of our authority. I submit that the practice of the Court is that where a local authority is proposing to do anything which affects the district at large, as the local authority is elected by the ratepayers, the ratepayers have no right to be heard against the common seal, but whenever anything is proposed by that authority which affects particular members or a particular class in respect of their property, they are entitled to a *locus standi*; *Edinburgh Municipal and Police Bill*, 1879, on the petition of John Hope (2 Clifford & Rickards, 149).

THE CHAIRMAN: Do you mean a class of ratepayers?

Freeman: No. The case I am putting is a case of owners and occupiers.

THE CHAIRMAN: The principle is quite clear, and settled by many decisions, that owners stand in a different position from ordinary ratepayers, and if they allege that their rights are interfered with by what is proposed to be done, they have been allowed a *locus standi*.

Freeman: In the *London County Council [General Powers] Bill*, 1893 (*infra* p. 290), it was proposed to impose restrictions upon low lying lands, so as to prevent persons building upon those lands except with the consent of the county council. Certain bodies petitioned against the bill on the ground that they were the owners of lands which would be affected. The petitioners were all ratepayers within the district but their *locus standi* as owners was allowed. We do not ask for a *locus standi* under S. O. 134, but to be heard as owners of property which will be injuriously affected by these clauses. The objection to individuals appearing as ratepayers against a bill promoted by a local board, is that they are bound by the seal of their authority, but we, as owners of the land, are affected individually, and not as ratepayers. This bill proposes in many respects to alter the existing law in such a manner as to cause great damage to the petitioners, and we are therefore entitled to a *locus standi*.

THE CHAIRMAN: If the substance of the bill is correctly stated in the petition, I do not

think we need trouble you further, we will hear the promoters.

Pembroke Stephens, Q.C. (for promoters): The point raised in this case is a very important one. In the petition no individual case of injury is alleged, but merely injury to a class, and, therefore, if these petitioners are allowed a *locus standi* then any number of owners who simply refer to certain clauses in a bill, and allege generally that they will be injured without alleging specific injury, will have a right to a *locus standi*. The contention of the petitioners is far too wide. The distinction drawn by the Court between the cases of owners and ratepayer is this, that a ratepayer, who elects the corporation, is represented by the corporation for all purposes, and therefore cannot be heard to complain of the act of the corporation, but an owner who does not elect the corporation, not being represented by it, has a right to be heard if that body proposes to do anything to his injury. The distinction between the case of a corporation and a local board is that a corporation is elected by the ratepayers and a local board is elected by owners as well as ratepayers, and therefore owners are as much represented by a local board as ratepayers.

Mr. CHANDOS-LEIGH: This bill proposes an alteration of the general law, amongst other alterations, by throwing the expense of altering sewers upon owners instead of upon the general district rate, and the question is whether, under the circumstances, the owners have not a right to be heard.

Stephens: I admit if the petition alleged specific injury to a particular man by a certain clause, then he would have a right to be heard. If the petition alleges that owners are affected by this bill in a different capacity from the general body of ratepayers they are heard, but not merely because they are owners. The other reason why I submit that the petitioners are not entitled to be heard is that since this bill was promoted there has been a meeting of owners and ratepayers, at which they could have attended and voted, and they are therefore bound by the result of that meeting.

The *CHAIRMAN*: That meeting was called in pursuance of Leeman's Act (35 and 36 Vict., c. 91) relating to the application of borough funds, the purpose of that Act being to authorise a corporation or local board to promote a bill and expend the rates in promoting a bill. An owner is not prevented in any way by this meeting having been held from petitioning against a bill and alleging that by the increased taxation the value of his property will be diminished.

Stephens: I agree, but what I submit is that a number of petitioners allege that they are prejudicially affected by the clauses generally of a bill, and without specifying which particular clauses affect particular petitioners, are not entitled to be heard against the preamble. There is no decided case in which owners alleging generally that they will be injuriously affected have been granted a *locus standi* against a local board. The petitioners do not show how they are individually affected, and I submit are not, according to the practice of this Court, entitled to be heard.

The *CHAIRMAN*: The *locus standi* is allowed. The petitioners are not admitted *qua* ratepayers, but because they are owners, some of them as occupiers being owners of leasehold property.

Locus Standi Allowed.

Agent for Petitioners, *J. C. Ball*.

Petition of (2) THE LONDON COUNTY COUNCIL.

Local Board District adjoining Metropolis—Bill for Special Powers as to Local Government—London County Council—Claim for Uniformity of Legislation—District discharging Sewage into County Council's Sewers—Hornsey Local Board Act, 1871—Internal Administration—Separate Jurisdiction—S. O. 134v. (County Council alleged to be injuriously affected by Bill)—Metropolis Managements Acts—Public Health Act, 1875—Divided Parishes and Poor Law Amendment Act, 1876—Poor Law Act, 1879.

The London County Council by their petition alleged that they and the inhabitants of their county would be injuriously affected by the bill, and claimed to be heard under S. O. 134n. After reciting some of their powers under the Metropolis Management Acts as to streets, they in effect objected to the provisions of the bill as being different from what was the law as to local government in the administrative county of London, pointing out that not only did the Hornsey district adjoin the boundary of the county, but that a portion of it projected into the county. They urged that this was an additional reason for uniformity of legislation in the adjoining parts of the two districts, and as a further

argument stated that the sewage of Hornsey was in part dealt with by them (the petitioners) in the main drainage system of London and that the bill might affect the existing arrangement as to it between themselves and the Hornsey local board. They further stated that an urgent necessity existed for the rectification of the boundary of the county of London so as, amongst other alterations of local areas, to include portions of Hornsey within it. It appeared however that the purposes of the bill were entirely for internal arrangement, and made no alteration in the existing arrangement between the county council and the local board as to sewerage and drainage, and that, as stated in the notice of objections, the London County Council had no interest or jurisdiction within the area of the Hornsey local board :

Held, that under these circumstances the petitioners were not entitled to be heard against the bill.

The *locus standi* of petitioners (2) was objected to on the following grounds: (1) the petition does not allege or show, nor is it the fact that any land, house property, right or interest of the petitioners will be or can be taken or affected under the powers of the bill or in consequence of the execution thereof; (2) the bill relates only to the local government district of Hornsey, and the petitioners have no jurisdiction or interest therein, and neither the petitioners nor the inhabitants of the county of London will be affected by the provisions of the bill; (3) the allegations contained in the petition as to the transfer of portions of the parish of Hornsey to the county of London, and as to the rectification of boundaries and re-arrangement of areas relate to matters outside the scope of the bill, and the petitioners are not entitled to be heard in relation thereto; (4) the position of the petitioners with regard to dealing with the sewage of the Hornsey district is not altered by the bill, and none of the provisions of Part II. or of Part IV. of the bill in any way affect the petitioners, nor can such provisions be exercised so as to injuriously affect the inhabitants of their district; (5) the bill does not contain any provision affecting the petitioners; (6) the petition does not allege or show that the petitioners have, nor have they, in fact, any such interest in the objects and

provisions of the bill as entitles them to be heard against it.

Freeman (for petitioners (2)) : The bill provides new legislation for Hornsey on many matters, amongst others, street regulation, sewerage and sanitary provisions, entirely inconsistent with the legislation under the county council, which, owing to the fact that the Hornsey district projects into the county of London, is applicable to parts of the same property, and even houses, as well as to parts of the same streets, and the petitioners therefore ask, as a matter of public convenience, that they should be allowed a *locus standi*, so that they may point out to the Committee the desirability of uniformity in legislation with regard to these two districts, which are not divided by any natural boundary, but by a purely artificial line passing in some cases through the middle of houses and buildings. There is now an application before the Local Government board to rectify the frontier of the district of the administrative county of London, by separating from Hornsey part of the district to which the provisions of this bill will apply, and therefore we ask for a *locus standi* in order that we may have some voice in the regulation of a district which may shortly be included in the administrative county of London. Another reason the petitioners ask to be heard is that the main sewers of London are constructed to take a certain quantity of sewage, and we are by arrangement bound to take part of the sewage of the Hornsey district, and under this bill the sewage which is to come into those main sewers might be largely increased. Under the Hornsey Local Board Act, 1871, part of the sewage of Hornsey goes into the high level sewers, in respect of which clause 20 applies and limits the amount of sewage to be discharged, but a very large portion of the Hornsey sewage goes to the Hackney sewers, not under that Act, and as to that portion of the sewage there is absolutely no limit, and under the bill I contend that the proportion of sewage sent *via* Hackney and Islington into the metropolitan sewers might be greatly increased. These are matters in which we are vitally interested, and the bill proposes to create different legislation on one side of this artificial boundary from what there is on the other, and not only does it impose new restrictions as to many matters, but in many instances the bill seeks to vary the Public Health Acts.

MR. HEALY : Can you refer the Court to any decision in a similar case ?

Freeman : No, I base my case on the ground of general convenience. There are a great

number of details in the bill, and it is as regards those details that we ask to be allowed to be heard to advise the Committee, and leave them to deal with the matter.

Mr. CHANDOS-LEIGH: You seem to claim a *locus standi* under S. O. 134B, which gives the Court discretion to grant a *locus*. In the *Lea Valley Drainage Bill*, 1892 (Rickards and Saunders, 202), the county council were granted a *locus standi*, but that was rather a stronger case than the present.

Freeman: It is in the discretion of the Court to grant us a *locus standi* if it considers that it is for the general interests that we should be heard.

Mr. HEALY: This bill does not affect the sewage communication between London and Hornsey. It only relates to sewage in Hornsey itself, as to connecting the houses with the drains in Hornsey.

Freeman: Everything done in these sewers in Hornsey would affect the petitioners, because they receive the contents.

Pembroke Stephens, Q.C. (for promoters): The only reason on which the petitioners ask to be heard is because they desire uniformity, but the legislature has itself created an absence of uniformity in the two districts, for the Public Health Act operates in Hornsey, whereas it does not operate in the metropolis. Everything we seek to do under this bill and all the jurisdiction we shall exercise is entirely within our own area, and the petitioners have no right to interfere with matters which are outside the area, over which they have jurisdiction. We are doing nothing by this bill which will in any way change the status of the London County Council. The rectification of our district would not be made under this bill, but under the Divided Parishes and Poor Law Amendment Act, 1876, and the Poor Law Act, 1879. Then, on the question of drainage, the petitioners are in no way injuriously affected. This matter, so far as the petitioners are concerned, was settled by sects. 17 and 20 of the Hornsey Local Board Act, 1871, and we are in no way whatever disturbing the arrangement then arrived at.

The CHAIRMAN: At the present time a certain low lying portion of Hornsey drains into the sewers at Islington. In this case we are dealing with important sanitary questions in the interests of the public, and if under the Standing Order the county council takes the responsibility of asserting that the interests of their area would wholly or in part be prejudicially affected, unless they are allowed to be heard, then unless this petition is frivolous, or they have no possible reasonable ground on

which they can say that they will be injured, *primâ facie* they ought to be heard.

Stephens: I submit their remedy is elsewhere. We either have a right to drain through Islington or we have not, and this bill in no way affects this matter. The Hornsey local board by this bill are merely asking for provisions for improving the house drains within their own district, and there is nothing in the bill which alters the status of Hornsey as against the outside districts, and this is merely an attempt by the petitioners to obtain an alteration of the Hornsey Local Board Act, 1871, to which they were parties. The *Lea Valley Drainage Bill*, 1892, was a very different bill to the present. It proposed, amongst other things, to constitute a body of Commissioners, with powers to divert and widen portions of the Lea and for other purposes. The county council in that case alleged that the effect of the carrying out of these works might be to affect the lower portion of the river Lea within the county, and they contended that the management and preservation of the Lea above London was a matter of such vital importance to the inhabitants of London that they ought to be represented on the commission proposed to be constituted by the bill, and they were under those circumstances allowed a *locus standi*. In the present case the provisions as to drainage affect only the house drainage in the district of Hornsey.

Mr. BONHAM-CARTER: As I understand the sewage of Hornsey is connected with the main drainage system, and its sewage in bulk is taken into the main drainage system of London.

Stephens: And in respect of that we make a payment, and we are limited in quantity.

The CHAIRMAN: As regards the claim of the petitioners to a *locus standi* based on the ground that there should be uniformity of legislation in these adjoining districts we are not disposed, as at present advised, to consider that to be a ground of *locus standi*; but as to the main drainage of London, which it is of vital importance should not be interfered with, the petitioners claim that the powers as to sewers and drains among other matters should not be exercised in any manner which may injuriously affect the inhabitants of the county of London, and they allege that their district will be prejudicially affected unless they are heard. It is to that limited point we would ask you to address yourself.

Stephens: Part II., of the bill deals with this matter and begins with clause 6, which is only a slight variation of the Public Health Act, 1875, and throws upon the individual owner the *onus*, at his own expense, of making the

alteration to the drainage therein provided. This does not affect any persons outside the Hornsey district. Clause 7 is only an extension of the same idea under the Hornsey Local Board Act, 1871. The petitioners are to take the sewage and we are to keep out our storm water, and the provision enables us effectually to carry out what we are now under an obligation to do.

Sir GEORGE RUSSELL: I, at all events, and I think some other members of the Court, look upon the county council as being, in the matter of drainage, the central authority. It would probably be prejudicial to the interests of London at large that the system of sewage should be dealt with sectionally, and therefore it is a matter of importance that the petitioners as guardians of the entire area should have a voice as to the sewage arrangements of one particular district being so laid out as to fit in with the general system of drainage for the entire metropolis.

Stephens: We are not within the county of London, and this is not a bill for the purpose of making any change in the system of sewage at all. If we proposed to alter the existing arrangement by making a new sewer, and to make a junction for the first time with the London sewers, the petitioners might have a right to be heard.

The CHAIRMAN: Is it not the fact that in Hornsey it is proposed under this bill to do something which is not done at present, viz., to separate the surface drainage from the sewage proper?

Stephens: No, we are already under obligations to do this by the Act of 1871, and under the provisions of the Public Health Act we have constructed a duplicate system of drains so as to keep separate sewage and surface waters. This bill only provides for an alteration of the connections between houses and the existing duplicate drains.

Mr. ROUNDELL: You are only seeking to regulate in a better way the existing system without interfering with the main drainage system?

Stephens: Yes, that is so. The remaining clauses are merely machinery clauses, and do not provide for the re-arrangement of sewage matters with the county council, and they have no right to be heard against the bill.

The CHAIRMAN: If we were satisfied that there was anything in the bill which would prejudicially affect the area of the county council we would be disposed to be very liberal in considering their right to a *locus standi*, but the Court is satisfied that what is proposed to be done is really for the purpose of enabling

the local board the better to perform their duty within its domestic area. The *locus standi* is therefore disallowed.

Locus Standi Disallowed accordingly.

Agent for Petitioners, *H. L. Cripps*.

Agents for Bill, *Rees & Frere*.

LEEDS CORPORATION (CONSOLIDATION AND IMPROVEMENT) BILL.

Petition of THE NATIONAL TELEPHONE COMPANY, LIMITED.

9th March, 1893.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Mr. PARKER-SMITH, M.P.; Mr. ROUNDELL, M.P.; Mr. HEALY, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Consolidation Bill for Borough Improvement—Additional Provision Enabling Corporation to Work Tramways—S. O. 171 [No Powers to be Given to Local Authorities to Place or Run Carriages upon Tramways]—Telephone Company—Injurious Affecting by Induction and Leakage of Electrical Currents—Tramways Already Worked by Electricity by Lessees of Corporation—Electrical Power Authorised by Existing Acts.

The bill was one for the consolidation of the local Acts in force within the borough of Leeds, but it was proposed, on a petition for additional provisions, to insert in it a clause empowering the corporation themselves to work certain tramways constructed by them within the borough, under powers conferred upon them by the Leeds Corporation Tramways Order, 1888, upon similar conditions to those required by Standing Order 171. Sect. 16 of the Tramways Order of 1888 had authorised the use of electricity as a motive power upon the tramways constructed under the Order, and some of the tramways were at the present time worked by electricity by the lessees of the corporation, to the injury, as alleged, of the telephones belonging to the petitioners, who now claimed to be heard in respect of the provisions of the bill which would authorise the corporation in certain events themselves to work the tramways by electricity. On behalf of

the promoters it was urged that the petitioners would be in no worse position in the event of the corporation themselves working the tramways by electricity than they were at the present time when the tramways were so worked by the lessees of the corporation, and that the complaint of the petitioners was really a complaint against the use of electricity on the tramways which had been authorised by the Tramways Order of 1888 :

Held, however, that the petitioners were entitled to be heard against the additional clause empowering the corporation under certain circumstances to work the tramways themselves.

[*Blackpool Improvement Bill*, 1892 (*Rickards & Saunders*, 167), cited and followed.]

The *locus standi* of the petitioners was objected to on the following grounds ; (1) no lands or property of the petitioners will be taken or interfered with under the powers of the bill, nor will any right or interest of the petitioners be prejudicially affected thereby ; (2) the petitioners are not incorporated by Act of Parliament and have no public duties to perform, nor have they any right to erect and place wires over, along, or across public streets, and are only permitted to do so by sufferance or agreement ; (3) the bill does not authorise the construction of any new or extended tramways, but merely authorises the corporation to work tramways for the time being vested in them in certain events ; (4) the bill does not seek to alter the existing powers of the corporation or their lessees in regard to motive power ; (5) in regard to paragraph 5 of the petition the promoters allege that the injury complained of in regard to their lines might have been obviated by the formation of a complete metallic circuit or some other method ; (6) moreover the matters set forth in paragraph 5 have been adjudicated upon by the High Court, and it would be unjust if the position of the litigants were altered by any amendment of the law by local Act of Parliament ; (7) the promoters deny the truth of the allegation contained in paragraph 6 of the petition, and allege that at the time the bill for confirming the Order of 1888 was pending in Parliament, the general state of knowledge in regard to the effect on telephone communications from electricity produced as a motive power was

fully understood, and that the petitioners ought to have made their complaint when that bill was before Parliament. Their present complaint is therefore a complaint in regard to past legislation, upon which they are not entitled to be heard ; (8) the petition does not disclose any ground of objection to the bill which, according to the practice of Parliament, entitles the petitioners to be heard against the bill.

Cripps, Q.C. (for petitioners) : This is a bill to consolidate with amendments the local Acts in force within the county borough of Leeds, but the promoters propose to insert certain new clauses on a petition for additional provisions. Of the new clauses clause A empowers the corporation, under certain circumstances, to themselves work tramways constructed by them under the Leeds Corporation Tramways Order, 1888. Sub-sects. 1 and 2 of clause A are as follows : (1) " If at any time the corporation are unable to demise the tramways for the time being vested in them or any of such tramways upon such terms as in the opinion of the Board of Trade will yield to the corporation an adequate rent therefor, the Board of Trade may grant a licence to the corporation to work such tramways, and the corporation may thereupon work the same and may provide such plant, materials, and things as may be requisite or convenient therefor, and in such case the several provisions hereinbefore contained relating to the working of the said tramways and the taking of tolls and charges therefor, shall extend and apply *mutatis mutandis* to and in relation to the corporation ; (2) provided that if at any time, during such working by the corporation, any company or person make to the corporation a tender in writing to take a lease of and to work the said tramways for such period (not being less than seven years, unless the corporation shall otherwise agree) at such rent and upon such terms and conditions as shall, in the opinion of the Board of Trade be adequate and proper, and such company or person at the same time offer to purchase the horses, cars, engines, machines, and fixed and moveable tramway plant of the corporation, not included in such lease, at a price to be fixed, unless otherwise agreed on, between such company or person and the corporation by a competent valuer to be appointed by the Board of Trade, then upon payment of such price the corporation shall demise the said tramways to such company or person at such rent and upon such terms and conditions, and during the continuance of that demise the powers of the corporation to work the said tramways shall

consent." Then sub-sections 3 and 4 of the clause empower the corporation to borrow the necessary money for the purchase of lands, buildings, and plant, for the purpose of the tramways, and to apply the receipts from the tramways, after payment of interest on the money borrowed, and the creation of a sinking fund, to the expenses of working and maintaining the tramways. In our petition we allege that, "By clause 16 of the Leeds Corporation Tramways Order, 1888, which was confirmed by Parliament, it is provided that the carriages on the tramways authorised by that Order to be constructed by the corporation may be moved by means of haulage with wire, ropes or other appliances placed underground, or by means of electrical power, pneumatic power, steam power, or any mechanical power. The Order contains due provision for the protection of the telegraphic lines of the Postmaster-General in the event of any tramways of the corporation being worked by electricity, but the Order contains no provisions for the protection of the electric lines and works of other companies or persons. The petitioners are a company carrying on a large and increasing business under licence from the Postmaster-General for a long term of years, in supplying telephonic communication to the public by means of the telephone exchange system, and also by means of private lines in an area including the said county borough of Leeds. The said tramways lie entirely within the said area. Your petitioners are the owners of many electric lines and works in the immediate neighbourhood of the said tramways most of which lines are connected with their said exchange system. Certain of the tramways constructed under the powers of the said Order as aforesaid have been worked by the lessees of the corporation by electrical power, and have been so worked without proper precautions to prevent induction and leakage, and as a result of this improper mode of working, the powerful electric currents employed have most seriously interfered with the electric currents used in your petitioners' telephone circuits, and with the communication through the wires. This effect has been produced not only in wires in immediate proximity to the circuits used for the purpose of working the said tramways, but also in wires at a considerable distance. Your petitioners have thereby been put to serious expense and inconvenience, and have been and are unable to give to the public the facilities of telephonic communication which are required, and which they could otherwise have afforded, and have

thus been hampered in the working and extension of their business. At the time at which the said Order was granted, the effect on telephonic communication of the currents used to produce such motive power had not been ascertained by experience in this country, nor was the question fully understood. Your petitioners did not therefore take action to secure the insertion in the said Order of the provisions necessary for their protection, such as have since been inserted in numerous other Orders and bills." We submit that we are therefore entitled to a *locus standi* in order that we may ask Parliament for the proper protection of our telephonic system within the borough of Leeds. There are several cases in which the *locus standi* of the petitioners' company has been allowed against similar bills to this, and amongst others, in the *Folkestone, Sandgate and Hythe Tramways Bill*, 1891 (Rickards & Saunders, 102), and the *Blackpool Improvement Bill*, 1892 (Rickards & Saunders, 167), and the *Barry Railway Bill*, 1893, *supra*, p. 240, and there is nothing to distinguish the present case from those cases, and more especially from the latter case.

MR. CHANDOS-LEIGH: As I understand, the petitioners have got clauses for their protection inserted in different bills though not always in the same form, and they wish for a *locus standi* against this bill in order that when they are before the Committee they might get some definite clause agreed on?

Cripps: That is one of our objects.

MR. CHANDOS-LEIGH: The whole question arises on the additional provision which has been inserted in order to meet the new S. O. 171 as to local authorities in certain cases working their own tramways.

Cripps: The point is precisely the same as that raised in the Blackpool case of last year.

THE CHAIRMAN: We would now like to hear counsel for the promoters.

Pembroke Stephens, Q.C. (for promoters): The petitioners are certainly not entitled to a general *locus standi* enabling them to go into the question as to the effect of electric power upon their telephones, for the additional provision does not seek to alter present legislation as to the use of electrical power already authorised by the Order of 1888 upon the corporation's tramways with regard to the corporation's lessees, and moreover it is only in the event, which may never happen, of the corporation working the tramways themselves that this question can ever arise.

MR. CHANDOS-LEIGH: This same provision was inserted in the Blackpool bill last year, and we allowed the petitioners a *locus standi*

against it. It was inserted for the first time in the *Huddersfield Corporation Bill*, 1882.

Stephens: In the Blackpool case clauses 56 and 57 empowered the corporation of Blackpool to purchase the buildings, carriages and plant used in working certain tramways as if the corporation were a new company, but there is no such provision in the present case. The petitioners found their right to be heard on clause A of the additional provision, but it contains nothing which will in any way alter their position for the worse. It merely provides that the corporation, instead of being lessors of tramways may become their own lessees, and may do precisely the same things that the lessees may now do, and if the event provided for does not arise, and the matter is left as it is now with power to the lessees to work the tramways by electricity, the position of the petitioners will remain the same as fixed by existing legislation, against which they cannot now be heard. I submit that there is nothing in this bill which affects the petitioners, and that at any rate they are not entitled, even on the assumption that the corporation may be going to work these tramways themselves, to any wider *locus standi* than the Court has always given in cases of this nature.

The CHAIRMAN: The *locus standi* is allowed against clause A of the clauses proposed to be inserted by way of additional provision.

Agents for Petitioner, *Martin & Leslie*.

Agents for Bill, *Sharpe & Co.*

LONDON AND NORTH-WESTERN RAILWAY BILL.

Petition of THE SALT UNION, LIMITED.

17th April, 1893.—(Before Mr. SHERRIFF WILL, Q.C., M.P.; Sir GEORGE RUSSELL, M.P.; Mr. ROUNDALL, M.P.; Mr. PARKER-SMITH, M.P.; and the Hon. E. CHANDOS-LEIGH, Q.C.)

Railway Sidings and Widening—Acquisition of Lands—Trade Association—Salt Union—Restrictive Covenants with Owners of Lands against Salt Working—Interests of Petitioners in Land—Alleged Interference with Covenants by Bill—Protective Clause in Original Act for Construction of Railway—Claim for Extension of Clause to proposed Widening—Exception of Minerals from Conveyance of Land to Rail-

way Company—Railways Clauses Consolidation Act, 1845, s. 77 [Working of Mines].

Clause 19 of the bill empowered the promoters to acquire compulsorily (among other lands) certain lands adjoining a portion of their railway, originally constructed and known as the Grand Junction railway, which ran through the salt districts of Cheshire. The petitioners were the Salt Union, consisting, as they alleged in their petition, of the largest manufacturers of salt and users of rock salt and brine in the kingdom, and owning works for the manufacture of brine in various parts of Cheshire. They stated that it was the practice of the Salt Union to enter into agreements with owners of land in the proximity of their works, by which the owners covenanted not to erect salt works upon, or let for that purpose, land in the proximity of the works and pumping shafts of members of the Salt Union, and further covenanted that in the event of an offer being made for the purchase of such lands for salt works, they would give notice of such offer to the members of the Salt Union interested in the lands, who would have a prior option of purchase of the lands on the terms offered. The petitioners alleged that some of the lands sought to be acquired under clause 19 of the bill for railway sidings and widening were subject to agreements containing those restrictive covenants, which would however, they contended, be rendered inoperative if the lands were compulsorily acquired by the promoters, and they further contended that clause 19 was in violation of a clause inserted in the original Act (3 Will. IV., c. 34) for the construction of the Grand Junction railway now sought to be widened by the promoters under the bill, which Act contained a section for the protection of the salt workers expressly prohibiting the railway company from getting or removing brine or rock salt in or under any of the lands acquired by them for the purposes of their railway; and the petitioners urged that the protection afforded them by that

section should be extended to the additional lands scheduled under the bill.

Contra, it was objected by the promoters that the petitioners had no such interest in the lands scheduled under the bill as to entitle them to be heard, and that in any case they were protected by sect. 77 of the Railways Clauses Consolidation Act, 1845, which excepted all minerals from a conveyance of land to a railway company, unless the same should have been expressly purchased:

Held, that the petitioners had such an interest in the lands sought to be compulsorily acquired under clause 19 of the bill as to entitle them to be heard against that clause, and so much of the preamble as related to it.

The *locus standi* of the petitioners was objected to on the following grounds: (1) it is not alleged in the petition, nor is it the fact, that any lands belonging to the petitioners will or can be taken or acquired under the powers of the bill; (2) the petitioners have not any such interest in any of the lands to be acquired under the powers of the bill as to entitle them, according to the practice of Parliament, to be heard against the bill; (3) the bill does not confer upon the promoters any such powers as stated in paragraph 6 of the petition, and even if the petitioners have any rights or interests in any salt or brine under the lands referred to in the petition (which the promoters do not admit) the petitioners are not entitled, according to the practice of Parliament, to be heard in respect thereof against the bill, inasmuch as the rights of the petitioners are amply protected by the provisions of the Railways Clauses Consolidation Act, 1845, with respect to mines and minerals which are incorporated with the bill; (4) the petitioners are not entitled to be heard in respect of the matters referred to in paragraph 7 of the petition, which are matters of past legislation and are in no way affected by the bill, and the bill confers no powers, and contains no provisions empowering the promoters to remove brine to other districts or to work salt or brine under the lands to be acquired by them, or to lay pipes or to construct ducts or other works for conveying brine into other districts; (5) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard against the bill.

Freeman (for petitioners): This is an omnibus bill. The petition is headed: "The humble petition of the Salt Union, Limited, of Salters' Hall-court, Cannon-street, in the City of London." The petitioners are the largest manufacturers of salt and users of rock salt and brine in the kingdom, and have expended very large sums of money in acquiring lands and easements and rights to acquire lands and get and use rock salt and brine, and in erecting works for the manufacture of brine in various parts of the county of Chester, and they object to that portion of clause 19 which gives the promoters power for the widening of their railway to acquire, "in the county of Chester, certain lands in the townships of Wharton and Moulton, in the parish of Davenham, lying on the north-east side of and adjoining the company's Grand Junction railway between a point 420 yards or thereabouts south-east of Winsford junction, and the public road which passes under the said railway at the Newbridge salt works." We are owners of very large salt works in this district, and in other parts. The system by which salt is obtained is this: the rain-water percolates through the surface of the land on to the rock salt below, and the brine thereby formed, which runs in channels underneath, is tapped by shafts sunk in the ground and pumped up and allowed to evaporate and then sold, and therefore it is necessary to acquire rights in respect of a very large portion of land so as to draw salt from underneath. We have a system of what is called protecting fields, that is to say, we agree with the landowner to pay him for a number of years a rental in order that we may have the first option of taking the land for salt working. In respect of the lands in question there are two agreements with the landowner—by the first he agrees for 28 years not to let the land or permit any person to work salt therefrom, and by the second he agrees with the Salt Union that if he has any offer for the land for salt working he will communicate to the Salt Union the terms of such offer, and that if they are willing he will let it to them on the same terms, in priority of anybody else. For this agreement we pay the landowner a substantial sum of money. Some of the lands scheduled to the bill are subject to these restrictive covenants.

The CHAIRMAN: Are these covenants on the part of the landowner, which run with the land, so as to bind his successor?

Freeman: That is my contention. Our first objection is that it will be possible for the promoters to obtain the salt under the lands they propose to take for widening their railway,

although under the Railway Clauses Act, 1845, a railway company does not acquire minerals with land unless they expressly purchase them, as the method of obtaining salt is by sinking shafts and thereby pumping up water charged with salt, which is not "minerals" within the meaning of the Act. The railway company would be entitled to do this. Further, should some of these lands become superfluous lands the promoters could sell them free from any restrictions that they are now under, and the person who bought them would be entitled to work the salt lying beneath them, he having acquired the rights over the surface, whereas at the present time the agreements between ourselves and the landowner prevent this from being done. We submit that we have, therefore, on this ground, such an interest in this land as entitles us to a landowner's *locus standi*. The second ground on which we ask to be heard is in order that we may get a protective clause inserted in the bill similar to that which has always been inserted in bills on former occasions by which a railway company obtained powers to take lands for constructing a railway through this salt district. The land which is now required by the promoters is for widening and enlarging a railway formerly known as the Grand Junction railway, which is now the property of the London and North-Western railway company. Sect. 157 of the Act of 1833 (3 Will. IV., cap. 34), by which the Grand Junction railway was authorised, saves the rights of salt owners by the following provision: "Provided also, and be it enacted, that the said company hereby established, their successors or assigns, or their agents or servants, or any other person by them authorised or employed, shall not sink for, raise or get any brine or rock salt in or out of any of the lands or grounds which shall have been or shall be set out and ascertained for the purposes of the said railway, except what may be necessarily raised or gotten in the making and maintaining of the said railway and works nor carry nor convey in pipes, troughs or soughs to be laid in upon or under any part of the said lands or grounds any brine for the making of salt or permit any other person or persons so to do or erect or make any buildings for the making or manufacture of salt in or upon such lands or grounds, but shall be and are hereby restrained from doing any of the acts, matters or things aforesaid." A similar clause was inserted in the Act whereby the West Cheshire railway was authorised in 1861. In 1884 the promoters endeavoured to repeal this clause and to substitute for it a less stringent one, but the bill was opposed by the

salt workers and rejected by Parliament. The promoters seek by this bill to extend the same line as was authorised by the Grand Junction Railway Act, 1833, by a widening, but they do not propose to extend the protective clause to these lands, and, therefore, the protection given us by Parliament as regards the original line will be valueless, because the promoters could put down a pipe in the additional land acquired by them under this bill and convey the brine away. If the promoters had sought by this bill to repeal the protective clause given us in respect of the piece of line they now seek to widen, we should have had an undoubted right to a *locus standi*; and they now seek by not extending the clause to the lands they propose to take for the widening of their line to effect the same purpose by rendering nugatory the protective clause, which Parliament has given us. We submit that we are, therefore, entitled to be heard to ask for the same protection in respect of these lands as Parliament has on two former occasions granted us under like circumstances.

Pope, Q.C. (for promoters): The petitioners do not allege in the petition that they are landowners, but merely that they are interested in portions of the lands proposed to be taken, having acquired valuable rights over and under the same in respect of their business as manufacturers of salt under agreements with the freeholders of such lands. The petitioners have not the smallest surface right over any of this land.

(The petitioners here produced a copy of the conveyance, and called evidence to prove that it was a true copy of the original, the same was admitted by the promoters and read.)

Pope: This conveyance merely contains a covenant restraining the freeholder from parting with his land to someone else for the purpose of salt making without first giving the petitioners the option of purchasing it, which option is only to be given if the application of the land has reference to the salt which is under it, but it does not give the petitioners any right over the surface. Under this bill we propose to acquire a strip of land for the purpose of a railway siding and for widening the line, and this land not now being subject to the restrictive clause contained in former Acts we do not propose to make it subject thereto, but we do not interfere at all with the operation of that restrictive clause over every other part of the line. We only get the conveyance of the land subject to the obligation, and we can only use this land for railway purposes, and if we have to sell any of it as surplus lands we could not convey more than we got, and we

could only convey subject to the rights, if any, of other people not inconsistent with the purposes of a railway, for which we acquire the land. The sale would be subject to the rights existing at the time of our purchase of the land.

The CHAIRMAN: The petitioners allege that you may sell this land as surplus land to the adjoining owner, and that he may then use it for any purpose.

Pope: We purchase the land but we do not purchase the salt or minerals, and our sale of surplus lands must comprise only the sale of that which it conveyed to us under our compulsory powers. A railway company does not acquire any minerals in a conveyance of land for railway purposes except by an express provision in the conveyance. That is dealt with by sect. 77 of the Railways Clauses Act, 1845, which is as follows:—"The company shall not be entitled to any mines of coal, ironstone, slate, or any other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby."

Freeman: The railway company would have compulsory power under this bill to purchase the land, and the restriction would, therefore, be absolutely gone.

Pope: We only purchase it subject to existing interests, or subject to our compensating them.

Mr. CHANDOS-LEIGH: The petitioners contend that the promoters could sell this land as surplus land, and that the purchaser would have the right to make salt works upon it.

Pope: We buy this land subject to the restrictive covenant as to salt works being erected upon it. If our user of the land were inconsistent with that covenant then we should have to compensate the petitioners, but if it is not inconsistent, then their covenant remains for what it is worth, though we may acquire the land.

The CHAIRMAN: When a railway company take land they take it absolutely, except the minerals, which are reserved unless they expressly purchase them, and they have to compensate every interest in that land, and having had to compensate every interest, they take the land subject to no restriction whatever.

Pope: We cannot, by buying the land for railway purposes annihilate the restrictive

covenant made with the original owner of the land that he will not let his land for salt works, although I contend this is not a covenant which runs with the land.

The CHAIRMAN: It is an agreement with the landowner who binds himself, his heirs, or assigns, and in consideration of which he receives a sum of money. It seems, therefore, to me, that it is a covenant which runs with the land.

Pope: Then it must bind us, so far as it is not inconsistent with the purposes for which we acquire this land.

The CHAIRMAN: No, for the company wipe it out by compensation, and the question arises whether the petitioners have an interest in that.

Pope: If they have an interest in a covenant running with the land that does not entitle them to a landowner's *locus standi*; for they do not allege in their petition that they claim as landowners. If the Court is against me on this point I need not argue the other points taken by the petitioners.

The CHAIRMAN: Everyone who has an interest in land has a landowner's *locus standi*; and the petitioners allege that they have acquired valuable rights over and under this land. The Court are of opinion that the *locus standi* of the petitioners should be disallowed, except as regards the particular paragraph of clause 19, which takes power to acquire these lands, against which they are entitled to be heard to ask for protection.

Locus Standi Disallowed except as against clause 19, and so much of the preamble as relates thereto.

Agents for Petitioners, *Busk & Co.*

Agents for Bill, *Sherwood & Co.*

LONDON & SOUTH-WESTERN RAILWAY BILL.

Petition of RATEPAYERS OF SOUTHAMPTON.

17th April, 1893.—(Before Mr. SHIRNESS WILL, Q.C., M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. PARKER-SMITH, M.P.; Mr. ROUNDELL, M.P.; and the Hon. E. CHANDOS-LEIGH, Q.C.)

Construction of Dock by Railway Company—Sale of Mud-lands on Foreshore by Municipal Corporation to Company—Individual Ratepayers and Burgesses—Representation—Construction of Footpath for Promenade on Sea-Front of Dock under previous Act—Bill

alleged to be in violation of Act—Expiry of Powers of Act.

The bill, *inter alia*, empowered the promoters to construct a dock with quays and an embankment, and for that purpose to purchase from the corporation of Southampton certain mud-lands forming part of the bed and shore of Southampton water, an agreement for the purchase of which lands had been already entered into by the promoters and the corporation, and was given effect to by the bill. A clause in this agreement provided that the railway company should not on any portion of the mud-lands construct, or permit to be constructed, any public promenade. The petitioners, who were a number of individuals petitioning as ratepayers and burgesses of Southampton, objected that the above clause in the agreement prohibiting the construction of a promenade was in violation of an obligation created by an Act obtained by the Southampton docks company in 1843 (6 & 7 Vict., cap. 65), and preserved by the Southampton Docks Act, 1871, that the Southampton docks company should construct a free promenade for the public along the sea-front of the docks authorised by those Acts, and they claimed to be heard against the bill as confirming the agreement already entered into by the corporation with the promoters. It appeared however that the powers of the Acts of 1843 and 1871 had subsequently lapsed, and that the lands sought to be acquired by the promoters under the bill were not the same as those to which the obligations to construct a public promenade had been attached, and that the petitioners had no rights or interests as owners or in any way distinct from those of the body of ratepayers of the borough, who were, in the absence of such rights, according to practice of the Court, represented by the corporation, and on the above grounds the *locus standi* of the petitioners was disallowed.

The *locus standi* of the petitioners was objected to on the following grounds: (1) as

regards the matters referred to in paragraphs 9, 10, 11, and 16 of the petition, the petitioners have not, nor have any of them, any individual interest, and only claim to be interested as several burgesses and ratepayers of the town and county of the town of Southampton; (2) the petitioners do not allege that they are inhabitants of the town and county of the town of Southampton, nor do they sufficiently represent the general body of such inhabitants as, according to the practice of Parliament, to entitle them to be heard against the bill; (3) the petitioners have not, nor have any of them, such an interest in the lands referred to in the said paragraphs 9, 10, 11, and 16 of the petition as to entitle them to be heard against the bill; (4) as regards paragraphs 12, 13, 14, and 15, any right that the petitioners may have in respect of the construction or non-construction of the public sea-wall or promenade referred to in those paragraphs is a right which they possess in common only with the other burgesses and ratepayers of the town and county of the town of Southampton, and they do not sufficiently represent that body to entitle them, according to the practice of Parliament, to be heard against the bill; (5) as regards all the allegations in the petition, the petitioners are represented by the mayor, aldermen, and burgesses of the town and county of the town of Southampton; (6) the bill does not contain any provision affecting the petitioners; (7) the petition does not allege or show that the petitioners have, nor have they in fact any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Kilby (solicitor and parliamentary agent, for petitioners): The petition is signed by about 70 persons, the great majority of whom are ratepayers of the borough of Southampton, and the petitioners object to an agreement dated 19th November, 1892, which has been entered into between the corporation and the promoters, which is sought to be given effect to by the bill, and which they allege will injuriously affect their interests. Clause 5 of the bill authorises the construction of the following works: “(1) A graving dock in the parish of St. Mary, in the town and county of the town of Southampton, on the foreshore or mud-lands of Southampton water, and of the rivers Itchin and Test, or one of them, together with an entrance into the said graving dock from and out of the Empress dock; (2) a quay or retaining wall in the said parish of St. Mary, commencing at or near the South pierhead of the Empress dock, and extending thence in a south-eastern direction for about 110 yards, thence in a southerly direction (along the

western side of the river Itchin), for about 520 yards, thence in a westerly direction for about 65 yards, and thence in a north-westerly direction (along the eastern side of the river Test) for about 500 yards and there terminating; (3) an embankment in the said parish of St. Mary, commencing at or near the termination of the quay or retaining wall above described, and terminating by a junction with the existing embankment lately belonging to the Southampton Dock company, and now to the company, on the western side of the Empress dock." By clause 17 of the bill the railway company are empowered to acquire the lands shown on the deposited lands, which are mud-lands forming part of the bed and shore of Southampton water, and vested in the company for the construction of the works authorised by clause 5 of the bill, and by clause 19 it is provided: "The company and the mayor, aldermen, and burgesses of the town and county of the town of Southampton may from time to time enter into and carry into effect, vary or rescind contracts, agreements or arrangements in relation to the purchase, leasing or exchange of lands." The petitioners are several burgesses and ratepayers of the town and county of the town of Southampton. In an Act obtained by the Southampton Dock company in 1843 a clause was inserted, which became sect. 43 of the Act, providing that a promenade should be constructed along the sea-front of the outer dock, to which the public should have free access for ever, and in each successive Act this clause has been retained, the interests of the public being assured thereby. By the Southampton Docks Act, 1892, the promoters obtained an Act empowering them to purchase the works of the dock company and they purchased the works under that Act, and the promoters then purchased from the dock company about fifty acres of mud-lands, and the agreement of the 19th November, 1892, was entered into, which expressly provides that the railway company shall not on any portion of the mud-land construct or permit any public promenade, and the corporation have therefore by this agreement, to which they are parties, deprived the ratepayers of the right they possessed under the dock company's previous Acts.

The CHAIRMAN: Is this agreement proposed to be confirmed by the bill?

Pember, Q.C. (for promoters): Yes, it is not, at present, in the bill, but it will be scheduled to the bill. The facts are these: In the year 1843, the Southampton Dock Company's Act was passed, enabling the dock company to carry out certain dock works, and for this

purpose to take certain lands of the corporation, and a clause was inserted in that Act for the benefit of the corporation to the effect that the dock company should make a promenade round the outside of the land they proposed to enclose along the top of the sea-wall, but those works were not carried out. In the year 1871, the Southampton Docks Act, 1871, was passed, and it is true that that particular clause was preserved, but there was a clause put into that Act which provided that if the works were not carried out within 21 years, the land should revert to the corporation. The works were never carried out, and the land has now reverted, *i.e.*, in 1892, after the expiration of 21 years, to the corporation. In 1892 the promoters purchased the dock undertaking, and they are now not going to carry out those works. This bill has nothing to do with those works or the lands then proposed to be acquired. The promoters have purchased some more land from the corporation of Southampton for the purpose of making a graving dock, and the corporation have stipulated that on this land the promoters shall not make any promenade. The land which the promoters now purchase is not the land which was subject to the obligations imposed by the Acts of 1843 and 1871, though the approach to the new land will be across a small part of the land which belonged to the dock company in 1843.

Mr. CHANDOS-LEIGH: Before 1871 was there any public right there?

Pember: No. I shall, if necessary, as a second ground for disallowing the *locus standi* of the petitioners, also argue that this petition is signed by only a very small number of persons, some of whom are not even ratepayers, out of a population of 65,000, none of whom have any special reasons giving them as individuals a right to appear against the common seal.

Killby: The corporation I contend neglected to discharge their duties to the ratepayers by enforcing the provisions of the Dock Acts, which provided for a promenade round the docks, and I submit that we are entitled to a *locus standi* in order that we may inform Parliament how the corporation have neglected their duty, and to insist that the London and South-Western railway company shall not have the powers which they seek to obtain by the bill, unless due provision is made for preserving the rights of the ratepayers in respect of this promenade. Sect. 7 of the agreement of 19th November, 1892, provides that the company shall not on any portion of the mud-land construct or permit any public promenade, and was inserted for the express purpose of

annulling the provisions of the Dock Acts which compel the construction of a promenade.

Sir GEORGE RUSSELL: If you admit the statement of facts made on behalf of the promoters, you are in effect seeking to revive an extinct right, and to apply it to land to which it at no time attached.

Killy: It is immaterial whether this is the particular land or not. It formed part of the whole of the land on which the dock was constructed. The dock has in fact been enlarged at different times.

Sir GEORGE RUSSELL: The dock must have been made in accordance with the powers they got by their Acts of 1843 and 1871.

Killy: I submit that they were bound to build an external dock wall to any dock they constructed under either of the Acts of 1843 or 1871, and to any dock that might be constructed during the 20 years referred to in the Act of 1871. I also submit that it is within the right of any number of ratepayers to come and ask Parliament not to allow the corporation to act in a manner which is inconsistent with the fair and reasonable discharge of their duties, and to oppose the power proposed to be conferred on the promoters by this bill.

The CHAIRMAN: Is this merely a ratepayer's petition, or does it set up an owner's case?

Pember: The petition is merely that of ratepayers.

The CHAIRMAN: The *Locus Standi* is *Disallowed* on both the grounds put forward on behalf of the petitioners.

Agents for Petitioners, *Speechley, Mumford, London, & Rodgers.*

Agents for Bill, *Rees & Frere.*

LONDON COUNTY COUNCIL [GENERAL POWERS] BILL.

Petition (1) of THE GOVERNOUR AND COMPANY OF THE NEW RIVER, BROUGHT FROM CHADWELL AND AMWELL TO LONDON; THE EAST LONDON WATERWORKS COMPANY; THE COMPANY OF PROPRIETORS OF LAMBETH WATERWORKS; THE COMPANY OF PROPRIETORS OF THE WEST MIDDLESEX WATERWORKS; THE GRAND JUNCTION WATERWORKS COMPANY; THE GOVERNOUR AND COMPANY OF THE CHELSEA WATERWORKS; AND THE SOUTHWARK AND VAUXHALL WATER COMPANY; (2) THE EAST LONDON WATERWORKS COMPANY; AND (3) THE KENT WATERWORKS COMPANY.

11th April, 1893.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Mr. PARKER-SMITH,

M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM CARTER.)

London County Council—Metropolitan Water Companies—Conservancy Board of Rivers Thames and Lee—Alteration of Constitution of Boards—Increased Representation of London County Council—Companies taking Water from Thames and Lee—Preservation of Purity of Rivers—Annual Contribution to Conservancy Funds—Petitions of Conservancy Boards against Bill—Representation—Election of Members of Lee Conservancy by Water Companies—Water Enquiries by County Council—Unlimited Power to expend County Rates—Repeal of Existing Acts limiting Expenditure.

The bill, *inter alia*, provided for increasing the number of members of the Thames and Lee conservancy boards, by the election by the London County Council of seven additional members to the Thames conservancy board, and of two additional members to the Lee conservancy board; and clause 15 of the bill repealed certain sections of the London County Council [General Powers] Act, 1890, and the London Water Act, 1892, whereby the council were empowered to hold enquiries and make investigations relative to metropolitan water supply, but were limited in their expenditure thereon to a total sum of £15,000, and the clause (15) empowered them to make such investigations "as they may consider desirable in the public interest," without limiting their expenditure thereon, and, by clause 30, to defray the cost of such investigation out of the county rates. The petitioners (1) were seven out of the eight metropolitan water companies, the only company who did not join in the petition being (8) the Kent waterworks company, who petitioned separately. The East London waterworks company (petitioners (2)), in addition to joining in petition (1), also petitioned separately, alleging as the reason that they were more largely interested in the river Lee than any of the other companies. All the petitioners (1, 2, and 3) claimed to be heard, first, against the

clauses of the bill altering the present constitution of the Thames and Lee conservancy boards, alleging that the proposed addition of members elected by the London County Council would destroy the present balance of power upon those boards, and would enable the county council, who were notoriously hostile to the water companies and had in view the object of themselves supplying water to the Metropolis in competition with the water companies, to exert an influence unfavourable to the companies on the conservancy boards. The petitioners, in the second place, claimed to be heard against clauses 15 and 30 of the bill, which would enable the county council to expend an unlimited amount upon investigations relating to metropolitan water supply, both in their capacity of water companies against whose interest (as they alleged) these investigations were directed, and as large ratepayers interested in the necessary increase of the county rate to meet the expenses of the investigations. It was objected that as to the first ground of *locus standi* the petitioners were all alike represented by the Thames and Lee conservancy boards, who were petitioners against the bill and whose *locus standi* was admitted, two of the companies directly electing members of the Lee conservancy board; and that the interests of the county council and the petitioners in the purity of the rivers was identical; and that, as to the second ground, the petitioners had no other interest than as ratepayers, in which capacity they were represented by the county council:

Held, that the *locus standi* of the petitioners (1 and 2) should be allowed against clauses 3, 4, 5, 6, and 7 of the bill, which altered the existing constitutions of the Thames and Lee conservancy boards, but not against the clauses of the bill for defraying the costs of water enquiries by the county council out of the county rate without limiting the amount; and that the *locus standi* of petitioners (3), who were not interested in the rivers Thames and Lee, must be disallowed.

The *locus standi* of the petitioners (1) was objected to on the following grounds: (1) the petition does not allege nor is it the fact that any lands or property of the petitioners can be taken under the powers of the bill; (2) the petition seems to be mainly based on allegations that the petitioners as ratepayers may have to pay more rates, and the promoters, the London County Council, contend that the extent to which they should have power to make expenditure out of money raised annually by rates is a matter between themselves and the ratepayers of London by whom they are elected; (3) the petitioners are not concerned in this matter, except as ratepayers, and are represented by the London County Council; (4) paragraphs 3 to 16 inclusive of the petition refer to those clauses of the bill under which the promoters seek representation on the conservancy boards of the rivers Thames and Lee. The relations stated in the petition to subsist between the petitioners, or some of them, and the Thames conservancy board, appear to be those of parties to agreements with the Thames conservancy board, but there is nothing in the bill which will in any way prejudice or affect the legal position of the petitioners under those agreements; (5) the Thames conservancy board are the proper party to be heard against this part of the bill; (6) in so far as the bill proposes to alter the constitution of the Lee conservancy board, on which the New River and East London companies are represented, the proper body to deal with this subject are the Lee conservancy board, who have presented a petition and who represent the petitioners; (7) as regards the facts stated in paragraphs 17 to 25 of the petition, the promoters deny that they are material. The limitations upon the expenditure of the council imposed in the sections to which the petitioners refer are not limitations imposed for the protection of the petitioners in their capacity of a commercial company, and those limitations were not designed to affect, and do not affect the company in any other manner than as ratepayers within the county; (8) the petition does not disclose, nor is it the fact that the petitioners have any such interest in the subject matter or that their property or rights will be interfered with by the powers proposed to be conferred in such manner as to entitle them, according to the practice of Parliament, to be heard on their said petition.

The *locus standi* of the petitioners (2) was objected to on the following grounds: (1) the petition does not allege, nor is it the fact, that any lands or property of the petitioners can be

taken under the powers of the bill; (2) as regards clause 3 of the bill there is nothing in the petition to show in what way the petitioners are interested in the matter, or how the powers sought by that clause could be prejudicial to the petitioners. The promoters deny that the petitioners are entitled to be heard with respect to this matter, which concerns the Thames conservancy board; (3) as regards clauses 5, 6, and 7 of the bill and so much of the preamble as relates thereto, the promoters object to the *locus standi* of the petitioners, on the ground that the petitioners are represented by the Lee conservancy board, who have presented a petition against the bill. The petitioners have under the Acts of 1868 and 1874, referred to in the 8th paragraph of the petition, the right of electing members of the Lee conservancy board; (4) as regards the allegations of the petition against clause 15 of the bill the promoters contend that the limitations upon the expenditure of the council in the sections to which they refer, are not limitations imposed for the protection of the petitioners in their capacity of a commercial company, and these limitations were not designed to affect and do not affect the company in any other manner than as ratepayers within the county; (5) the petitioners are not entitled to be heard against the bill in their capacity of ratepayers, and are represented by the London County Council; and the extent to which the London County Council should have power to make expenditure out of money raised annually by rates is a matter between themselves and the ratepayers of London, by whom they are elected; (6) the petition does not disclose nor is it the fact that the petitioners have any such interest in the subject matter, or that their property or rights will be interfered with by the powers proposed to be conferred in such manner as to entitle them, according to the practice of Parliament, to be heard on their said petition.

The *locus standi* of the petitioners (3) was objected to on similar grounds to those taken against the *locus standi* of the petitioners (2).

Pember, Q.C. (for petitioners (1 and 2)): Petitioners (1) are the Associated Metropolitan water companies, consisting of seven out of the eight water companies, as the Kent waterworks does not sign the joint petition, and the petitioners (2) are the East London water company, who join in the Associated petition, but have also petitioned separately.

Freeman (for the promoters): We agree that the petition of the Associated water companies raises the whole of the points, and we therefore consent to the decision being taken as governing the cases of petitioners

(1 and 2) and of petitioners (3), so far as they object to clause 15 of the bill repealing the limits of expenditure on water and other enquiries by the London County Council, imposed by the London County Council [General Powers] Act, 1890, and the London Water Act, 1892. Obviously, the petitioners (3), who are the Kent waterworks company, have no interest in the constitution of the Thames or Lee conservancy boards, as they do not take any water from either of those rivers.

Pember, Q.C.: I prefer to take the case of petitioners (2) separately as there are some matters peculiar to it, but many of my observations are common to both petitioners (1) and (2). We have two grounds of opposition to this bill: first, we object to the proposed change in the constitution of the conservancy boards of the Thames and the Lee, and, secondly, we object to the unlimited powers of spending money proposed to be granted by this bill on water investigations. Clause 3 of the bill provides that "from and after the passing of this Act the number of the conservators of the river Thames shall be thirty instead of twenty-three, and the additional conservators may be elected as hereinafter provided. (1) It shall be lawful for the council to elect seven persons out of their own body to be conservators, and the several persons so elected shall hold office as conservators only so long as they continue to be members of the council." The remainder of the clause and clause 4 relate to administrative matters connected with the new members of the board. By clause 5 of the bill it is provided that (1) "from and after the passing of this Act the council may appoint three persons out of their own body to be members of the Lee conservancy board instead of one, and the number of the Lee conservators shall be fifteen instead of thirteen," the remainder of the clause and clauses 6 and 7 being merely administrative. We ask to be heard on all these clauses which deal with the alteration of the constitution of the two boards by the addition of the county council members to them. The petitioners other than the New River company own waterworks on the Thames between Kingston and Sunbury, and take water for supply within their districts, and we are obliged by statute to pay annually large sums of money amounting to £18,000 to the conservancy board in consideration of our taking such water, and of the board being obliged to preserve the flow and purity of the river, in which we are very much interested. Out of twenty-three members

of the Thames conservancy board seven at present represent the county of London, being elected by the corporation of the city of London, whilst only four represent authorities interested in the river above the points where we take water. The proposed alteration would give to the county of London 14 representatives in all, out of a total of 30, and the balance of power would be seriously altered, and our interests would be prejudicially affected thereby, and we submit that no alteration of the constitution of the board should be made unless the whole question of its constitution is reviewed and provision made for due representation of all parties interested in the conservancy of the Thames. The other petitioners, the New River company and the East London waterworks company own waterworks on the Lee, and they each appoint two members on the Lee conservancy board, and the county of London also appoint two members, one of whom is appointed by the corporation and the other by the county council, and these petitioners object to the proposed alteration in the constitution of the Lee conservancy board on similar grounds to those on which the other petitioners object to the alteration of the constitution of the Thames conservancy board. This is a proposal to alter the constitution of the Lee and Thames conservancy boards to the prejudice of the petitioners by altering the balance of power. The East London water company take considerably more water from the Lee than they do from the Thames, but they take water from both rivers, and with regard to the Lee, the water of the Lee absolutely belongs to the water companies, except such an amount as is necessary for the navigation; and as the East London water company are interested more largely than any of the other companies in the Lee, they have besides joining the Associated companies' petition, also petitioned separately. The second ground on which we ask to be heard is against the powers proposed to be conferred by this bill to spend an unlimited amount of money in water investigations. By clause 15 of the bill it is provided that "Sect. 38 of the London Council [General Powers] Act, 1890, sect. 70 of the London Council [General Powers] Act, 1891, and sect. 3 of the London Water Act, 1892, are hereby repealed, and from and after the passing of this Act, the council shall have power to obtain such advice and assistance, to make such investigations, and to carry on such negotiations on any subject as they may consider desirable in the public interest." By clause 28 it is provided that "(1) the council may expend on capital account for carrying

out the purposes by this Act authorised such money as they may from time to time think fit, not exceeding ten thousand pounds;" but that is limited to capital expenditure, and the council evidently intend to spend what they choose on water enquiries out of their county rates, for by clause 30 it is provided that "all costs and expenses of the council in the execution of this Act (except in so far as they may be otherwise provided for by this or any other Act) shall be defrayed as payments for general county purposes within the meaning of the Local Government Act, 1888." Sect. 38 of the London County Council [General Powers] Act, 1890, and sect. 3 of the London Water Act, 1892, which it is proposed to repeal by clause 15, gave the council power to spend by the former Act £5,000, and by the latter Act £10,000, i.e., in all £15,000, upon making enquiries and investigations as to the water supply of London. But clause 30, together with clause 15, confers upon the council unlimited power of defraying any expense, however great it may be, on water investigations in London, instead of the very limited power granted by the Acts of 1890 and 1892, and we submit that we are entitled to be heard on the question of money for making these enquiries. We opposed the London Water Bill, 1892, as originally introduced, and only withdrew our opposition when we were satisfied that the sum was limited, and in the belief that such limitation was an important protection to our respective properties and interests, but it is now proposed by this bill to grant powers to the council which are absolutely unlimited, and inasmuch as we had a *locus standi* when the council sought to expend £10,000 upon these investigations, we submit we are entitled to be heard now when they seek to obtain unlimited powers of spending money on investigations and to charge the expenses they incur on the county rate. It is notorious that these enquiries are for the purpose of the council taking the water supply into their own hands and competing with the water companies. There is another reason why we should be allowed to be heard. The question of the legality of the agreements under which the water companies pay a sum to the conservators has been raised, and though the arbitrator has decided in favour of the validity of the agreements, they are still challenged by the council, and we submit that if the council obtain the balance of power in their hands they would be in a position to upset these agreements, and thereby seriously affect our interests. On these grounds, therefore, we submit that we are entitled to a *locus standi* against that portion

of the bill which deals with the question of water supply.

Freeman (in reply) : The bill merely proposes to carry one step further the action which Parliament has for many years declared to be the proper course in relation to the conservancy board. Taking first those parts of the petitions which deal with the proposed alteration of the conservancy board, as regards the Thames conservancy and that portion of the Associated petition which deals with it, we submit that the petitioners show no grounds why they should be heard, and further, we say that inasmuch as the Thames conservancy themselves appear with a petition which traverses the whole ground relating to the proposed alteration of the conservancy board, they are the proper persons to be heard and not the petitioners, who fail to show that they have any divergent interests from the Thames conservancy. Originally the conservancy of the Thames was in the corporation of London who represented the whole of London; then the traders and others were given some representation upon the board, and afterwards some representation was given to the upper Thames, and now it has become necessary to carry the representation a step further, by giving to the county council, which represents all that part of London outside the corporation itself, the same representation as Parliament gave the corporation when it represented the whole of London. We submit that the fact of our asking for certain representation upon the board gives no right to companies who purchase water from the conservators to be heard against any alteration of the constitution of the body, and if any body should be heard on the question it is the body which it is proposed to alter, and they have petitioned against the bill. The petitioners allege that they are interested in having the water kept pure, but one of the chief objects we have in wishing to come on the board is to preserve the purity of the water. Moreover, the conservancy are petitioning against the bill, and will in their own interests see that nothing is done to injure the water companies upon whose funds they chiefly rely.

The CHAIRMAN : The position you have to deal with is this ; the companies who are primarily interested in keeping the Thames pure, say that the constitution of the board ought not to be altered in their absence, and the promoters say that the conservancy board are the only persons entitled to be heard, but it seems to me that the companies who are primarily interested and whose officers the conservancy board are, as well as being officers of the public, ought to have a voice in the matter.

Freeman : We submit that this is wholly a question between the public as represented by the county council and the conservancy board, whose constitution it is proposed to affect by adding seven members of the body most interested in the purity of the Thames. The petitioners, in order to obtain a *locus standi*, must show that the bill in some way injuriously affects their rights or interests, and this they have failed to do. As regards the Lee conservancy, it is necessary to strengthen the position of the London County Council in order to preserve the balance of power upon that conservancy. At present the two municipal bodies of the district affected by the Lee, that is, the corporation of London and the London County Council, have only one member each on the conservancy board, whereas the New River and East London water companies together, have four members, and it is therefore most essential that the bodies interested in the sanitary questions should have greater representation, and this is what the bill proposes to effect. The two companies in the Associated petition, viz., the New River and the East London companies, who alone take water from the river Lee, are themselves represented by two members each on the Lee conservancy board, whose *locus standi* against the bill is admitted, and therefore those two companies will appear to oppose the bill by their authorised and proper representatives, the Lee conservancy board.

The CHAIRMAN : But the proposal is to change the constitution.

Freeman : I submit that the general practice of this Court is that there shall not be duplicate representation in opposition to a bill, if the parties are properly represented by the one central authority opposing the bill, and that there is nothing in the petition of the water companies which will entitle them to be heard. I will now deal with the second ground on which the petitioners claim a *locus standi*, which is that the bill proposes to revoke certain clauses in former Acts, and proposes to confer on us powers to make investigations into subjects which we may deem it necessary to enquire into. The petitioners allege that they have on former occasions petitioned against bills of a similar character promoted by the council, and they say that there is no reason, why if that is so, they should not be entitled to be heard against this bill, but as a matter of fact their *locus standi* was never objected to, and therefore the fact that they did petition in no way forms any precedent which can affect the present case. It is true that in the Acts of 1890 and 1892, a certain limitation was placed upon the amount that was then to be expended

on investigations, but such limitation was in no way due to the action of the water companies, but it was on our showing by our estimate that a certain sum would be sufficient for the purposes for which it was required. The promoters, as the responsible authority representing the Metropolis, now find it necessary to ask for powers to make investigation of a wider character. As regards our position under clause 30 of the bill, it is this: if we require to raise money in respect of capital account we must do so by separate money bills introduced each year, but as regards matters, the expense of which we can defray out of the rates, and this would cover the expenses of these investigations, we are given a right to throw it upon the rates, and we should be restricted in spending too large a sum, because the rates would then be materially raised, and we should have to account to the ratepayers by whom we are elected.

The CHAIRMAN: Do you admit that the effect of the construction of your bill will be, by repealing clause 3 of the Act of 1892, to give you power to make roving investigations and to charge them upon the county rates?

Freeman: Yes. The bill enables us to spend such sum as we may think necessary. The petitioners claim to be heard as ratepayers, and we submit that they are in no different position from any other ratepayers in the Metropolis, and the ratepayers are directly represented upon the London County Council, who are the authority for spending and dealing with the rates. It is the practice of this Court not to allow a ratepayer to appear against his rating authority, and the petitioners are, therefore, not entitled to be heard as ratepayers, as they are distinctly represented as such by the county council.

The CHAIRMAN: We do not think it worth while to distinguish between those of the Associated water companies who are respectively interested in the Thames and the Lee, and allow the *locus standi* of both the petitioners (1 and 2) as regards the alteration of the constitution of the Thames conservancy and the Lee conservancy boards, and disallow it as regards the question of investigations and spending money upon them dealt with by clauses 15, 28, and 30 of the bill.

Freeman: That will exclude (3) the Kent waterworks company, who are not interested in the Thames or the Lee from being heard altogether.

The CHAIRMAN: Yes.

Locus Standi of Petitioners (1 and 2) Disallowed except as regards clauses 3, 4, 5, 6 and

7, and so much of the preamble as relates thereto.

Locus Standi of Petitioners (3) Disallowed.

Agents for Petitioners (1), *Rees & Frere*.

Agents for Petitioners (2), *Bircham & Co*.

Agents for Petitioners (3), *Martin & Leslie*.

Petition of (4) THE CORPORATION OF WEST HAM AND OTHER LOCAL AUTHORITIES; (5) THE ESSEX COUNTY COUNCIL; (6) THE BERKSHIRE COUNTY COUNCIL; AND (7) THE SURREY COUNTY COUNCIL.

London County Council—Alteration of Constitution of Conservancy Board of Rivers—Additional Members—County Councils and Municipal Corporation—Riparian Districts—Disturbance of Balance of Power on Conservancy Boards—Claim of Petitioners for Additional Representation on Board—S. O. 134 [Municipal Authorities and Inhabitants of Towns]—S. O. 134B [County Council alleged to be Injurious Affected by Bill].

The alteration of the constitution of the Thames and Lee conservancy boards by the addition of members, to be elected by the London County Council under clauses 3—7 of the bill was also objected to by (4) the corporation of the county borough of West Ham, and by (5, 6 and 7) the county councils of Essex, Berkshire, and Surrey. All the petitioners objected generally to the addition of members representing the London County Council upon the respective conservancy boards as disturbing the present balance of power upon the boards, and urged that if the county of London was to be directly represented upon them, they should be heard to advance before the Committee on the bill similar claims to representation on the part of their respective districts, which were as much interested in the proper management of the rivers Lee and Thames as the county of London itself. It was objected on behalf of the promoters that the petitioners had failed to point out anything in the bill which would injuriously affect their districts; and that their proper course, if they desired real direct represen-

tation on the conservancy boards was to introduce a bill into Parliament for the purpose:

Held, however, that the petitioners were entitled to be heard against the clauses of the bill, by which it was sought to alter the constitution of the conservancy boards, so far as they were respectively interested in one or both of the rivers Thames and Lee.

The *locus standi* of the petitioners (4) was objected to on the following grounds: (1) the petition does not allege nor is it the fact that any lands or property of the petitioners can be taken under the provisions of the bill; (2) the petition refers to those parts of the bill under which it is proposed to provide for the representation of the promoters on the Thames and Lee conservancy boards; as regards these provisions the promoters contend that the conservancy boards are the proper parties to be heard before the Committee on the bill; (3) as regards the Lee conservancy board the petitioners are directly represented on the board; (4) the petition does not disclose nor is it the fact that the petitioners have any such interest in the subject matter or that their property or rights will be interfered with by the powers proposed to be conferred in such manner as to entitle them, according to the practice of Parliament, to be heard on their said petition; (5) if the petitioners are entitled to be heard the promoters submit that they ought to be limited to the clauses relating to the constitution of those boards.

The *locus standi* of the petitioners (5) was objected to on the following grounds: (1) the petition does not allege nor is it the fact that any lands or property of the petitioners can be taken under the powers of the bill; (2) the petitioners apparently rest their claim to be heard on the ground that the whole of their county will be injuriously affected by the bill, but the promoters (the London County Council) contend that the petition does not show in what way the petitioners' county will be injuriously affected, and that their county will not be injuriously affected by anything contained in the bill in such a manner as to entitle the petitioners to be heard on their petition against it; (3) if the petition discloses any right to be heard the promoters submit that the petitioners ought to be limited to the question of whether or not, in the event of the promoters obtaining representation on the conservancy boards or either of them, the petitioners should

also be represented upon such boards; (4) the powers of the Thames conservancy board do not affect the county; or, if they do affect the county at all, it is only a limited part of the county, and it is not alleged in the petition that the bill will affect injuriously any particular part of the petitioners' county, and the promoters contend that no part of the petitioners' county is or can be so affected; (5) the petition does not disclose nor is it the fact that the petitioners have any such interest in the subject matter or that their property or rights will be interfered with by the powers proposed to be conferred in such manner as to entitle them, according to the practice of Parliament, to be heard on their said petition.

The *locus standi* of the petitioners (6 and 7) was objected to on similar grounds to those taken to the *locus standi* of petitioners (5).

Balfour Browne, Q.C. (for petitioners (4)): The decision of the Court on the case of the petitioners (1 and 2) appears to govern also that of the corporation of West Ham for whom I appear, that is as regards the Lee conservancy, at all events, on which board we are at the present time represented by one member chosen jointly by ourselves and the other local authorities who sign the petition.

The CHAIRMAN: The opinion of the Court is that those petitioners who are at present interested in the constitution of these boards have a right to be heard when it is proposed to change the constitution.

Balfour Browne: At the present time we are not represented on the Thames conservancy. The promoters seek to have representatives on the Thames conservancy because that river runs through their district, but the Thames as well as the Lee runs through our district, and we therefore submit that we should be heard to say that if the promoters are to be given representatives on the conservancy board we should have representatives also.

Richards (for petitioners (5 and 6)): The petitioners claim a *locus standi* under S. O. 134c which provides that a county council, alleging that they are injuriously affected, shall have a *locus standi* against a water bill. The Thames runs for about 40 miles along the coast of Essex. At present the petitioners (5) have no representative upon the Thames conservancy board, and are content with the constitution of the board, but they submit that if the promoters are to have increased representation on the board then they who have a much larger river board than the promoters ought to be heard against any alteration in the constitution of the board. About 18 miles of the river Lee is within the Essex County Council's district,

and the petitioners submit that, as the promoters are seeking to increase their representation on the Lee conservancy from one to three, and as a large proportion of the river Lee is within the district of the petitioners, they are therefore entitled to be heard to ask for some representation on that board.

The CHAIRMAN: This is not a bill for dealing with the water supply of your district.

Richards: No, and I do not therefore base my argument entirely upon S. O. 134c. I also claim to be heard under S. O. 134b. In the *Lee Valley Drainage Bill*, 1892, on the petition of the London County Council (Richards & Saunders, 202) the same objections which are now taken by the promoters were then made, but the petitioners were allowed a *locus standi* under S. O. 134b, which empowers the Court to give a *locus standi* to a county council alleging its district to be injuriously affected by any bill.

Mr. CHANDOS-LEIGH: That was a question of drainage. All that is objected to in this case is the alteration of the constitution of the conservancy board.

The CHAIRMAN: The petitioners' case is that if it is right that the London County Council should be represented on the Thames conservancy board, there is no reason why they also should not be represented.

Richards: The case of the petitioners (6) is nearly identical with that of the petitioners (5), the only distinction being that the Berkshire County Council have about a hundred miles of river under the Thames conservancy, but are not interested in the river Lee. Although they have not any direct representation on the Thames conservancy, nevertheless the four members who represent the upper Thames are all Berkshire men.

Pembroke Stephens, Q.C. (for petitioners (7)): I adopt the argument of the petitioners (5 and 6), but I say in addition that no change of the constitution of the conservancy board is desirable. The promoters at present have no representation upon the Thames conservancy, which consists of 23 members, representing various interests, and it is now proposed to give the promoters seven representatives, or nearly one-fourth of the board, which will then become 30. These seven are asked for distinctly in the London interest. The preamble sets out that because the Thames runs through London the promoters have a certain interest in it, and yet they object to the *locus standi* of the various county councils through whose districts the river flows, with the exception of the Middlesex County Council, which the promoters have not objected to, and I submit therefore

that this is an attempt to obtain for London a special and distinct influence upon the Thames conservancy.

Freeman (for promoters): We were too late to lodge the objections to the *locus standi* of the Middlesex County Council; that is the reason they are not objected to.

Pembroke Stephens: We wish to be heard in order that we may submit that there should be no change in the constitution of the board. The decisions of the Court show that petitioners have under similar circumstances been allowed a *locus standi*. Not only in cases where there has been a disturbance of the existing interests of the people, who are represented on the board, but also where others outside have sought to be represented.

The CHAIRMAN: At present you need not refer to any cases.

Freeman (in reply): I submit that none of these petitioners are entitled to be heard, as they fail to show that there is anything contained in this bill which will injuriously affect them, and that it is not sufficient for the petitioners merely to allege that they will be injuriously affected, but they must satisfy the Court that their allegation is *prima facie* likely to be true.

The CHAIRMAN: Do the promoters suggest any reason why the London County Council should be represented which does not apply to the neighbouring county councils?

Freeman: Because Parliament has already given to us statutory powers in reference to dealing with the Thames, *e.g.*, for the prevention of floods, whereas that is not so with these other counties; and, moreover, they do not show in their petitions how they would be damaged.

The CHAIRMAN: Why are you disturbing the balance of power?

Freeman: They might wish to argue that they should have some representation, and if the Court are of opinion that they should, they would grant them a limited *locus standi* to ask for clauses for this purpose, but this will give them no right to be heard against the bill generally.

The CHAIRMAN: The petitioners are content with the present representation, and the promoters desire to disturb the present balance of power on the conservancy boards, and alter their constitution, and they ask to be heard to say that you should not alter the balance, and if it is right that you should have direct representation on the board, then that they should be allowed to ask for similar representation.

Freeman: Their proper course is to introduce a bill to give them representation on the Board, as we are doing by this bill. They must show that they would be damnified by this bill, and it is not sufficient for them to say they are content with things as they are now, and I submit that such an allegation gives them no right to be heard against the bill generally, and at most all they are entitled to is a limited *locus standi* to ask for representation.

The CHAIRMAN: The *Locus Standi* of the Petitioners on the question of the alteration of the constitution of the conservancy boards is *Allowed*, distinguishing however between the petitioners who are interested in both the Thames and the Lee, and those who are interested in the Thames only. The *Locus Standi* of Petitioners (4 and 5) is *Disallowed* except as to clauses 3 to 7 inclusive, and so much of the preamble as relates thereto. The *Locus Standi* of Petitioners (6 and 7) is *Disallowed*, except as to clauses 3 and 4, and so much of the preamble as relates thereto.

Agents for Petitioners (4), *Hillearys*.

Agents for Petitioners (5), *Sherwood & Co.*

Agents for Petitioners (6), *Sherwood & Co.*

Agents for Petitioners (7), *Wyatt & Co.*

Petition of (8) THE UPPER THAMES ASSOCIATION.

River Conservancy Board—Proposed Alterations in Constitution—Voluntary Association for Election of Conservators to represent Particular District—Claim to represent Electors—Absence of Authority to Petition Parliament.

The petitioners were a voluntary association formed for the purpose of promoting the efficient representation on the Thames conservancy board of persons entitled to elect conservators to represent the upper Thames, and they claimed to be heard against the provisions of the bill for altering the constitution of the Thames conservancy board as the representatives of the electors of the upper Thames districts. It did not appear, however, that the objects of the association included the presentation of petitions to Parliament, or that the petitioners had any special authority from the electors to oppose the present bill:

Held, that under these circumstances the *locus standi* of the petitioners must be disallowed.

The *locus standi* of petitioners (8) was objected to on the following grounds: (1) the petition does not allege, nor is it the fact, that any lands or property of the petitioners can be taken under the powers of the bill; (2) it appears that the petitioners are a voluntary association comprising a certain number of members, but not having any legal status or right to represent the general body of electors of the conservators; (3) as regards the constitution of the conservancy board the promoters contend that the board are the proper party to be heard before the Select Committee, and that the present petitioners are neither themselves affected by the bill in any manner entitling them to be heard or representative of any interest entitled to be heard; (4) the petitioners are represented on the conservancy board; (5) the petition does not disclose, nor is it the fact, that the petitioners have any such interest in the subject matter, or that their property or rights will be interfered with by the powers proposed to be conferred in such manner as to entitle them, according to the practice of Parliament, to be heard on their said petition.

Witherington (solicitor and secretary to the upper Thames association): The petitioners are a voluntary association formed two months ago to promote the efficient representation on the conservancy board of persons entitled under the Thames Navigation Act, 1866, to elect conservators and to represent the upper Thames on the board, and already one-third of the electors of the upper Thames have joined this association.

The CHAIRMAN: But you are not entitled to represent them for the purpose of petitioning Parliament, not having any legal status or authority to do so.

Witherington: We are ratepayers.

The CHAIRMAN: You do not petition as ratepayers but as an association, and you do not represent the ratepayers for the purpose of petitioning. The *locus standi* must, therefore, be disallowed.

Locus Standi of Petitioners (8) *Disallowed*.

Agents for Petitioners (8), *Lewin, Gregory, and Anderson*.

Petition of (9) THE THAMES RIPARIAN OWNERS' ASSOCIATION, AND SIR GILBERT CLAYTON EAST, BART.

Practice—Joint Petition of Association of Riparian Owners, and Individual Owner—Objections to Locus Standi limited to claim of Association to

be heard—Rights of Individual Owner as Joint Petitioner.

The petition, which was directed against clauses 3 and 4 of the bill relating to the constitution of the Thames conservancy board, was signed by Sir Gilbert Clayton East, a riparian owner on the Thames, in his capacity as president of the Thames Riparian Owners' association, and also as an individual riparian owner, his signature being subscribed twice at the end of the petition. The objections to *locus standi* lodged by the petitioners referred only to the claim of the Riparian Owners' association to be heard, and did not deal with the claim of Sir Gilbert Clayton East to be heard as an individual riparian owner: *Held*, that under these circumstances the *locus standi* of the petitioner in his individual capacity must be considered as not objected to, and that he was therefore entitled to be heard on his petition against the bill.

The *locus standi* of the petitioners (9) was objected to on the following grounds: (1) the petition does not allege, nor is it the fact, that any lands or property of the petitioners can be taken under the powers of the bill; (2) it appears that the petitioners are a voluntary association comprising a certain number of members, but the petition is not signed by the members, nor does it appear that the signature was authorised by the members of the association; (3) as regards the constitution of the conservancy board the promoters contend that the board are the proper party to be heard before the Select Committee, and that the present petitioners are not affected by the bill in any manner entitling them to be heard; (4) the petition does not disclose, nor is it the fact that the petitioners have any such interest in the subject matter, or that their property or rights will be interfered with by the powers proposed to be conferred in such manner as to entitle them, according to the practice of Parliament, to be heard on their said petition.

Baker (parliamentary agent for petitioners (9)): I appear for the Thames Riparian Owners' association whose *locus standi* has been objected to by the promoters, and, after your decision against the *locus standi* of

the upper Thames association, I do not seek to press the petitioners' claim to be heard, but I appear also for Sir Gilbert Clayton East to whose *locus standi* the promoters have not objected, and he claims to be heard therefore on the ground that he is not objected to. Sir Gilbert East is a riparian owner and president of the association and a conservator, and alleges that the balance of power of the present conservancy board ought not to be altered. The petition is headed "The humble petition of the Thames Riparian Owners' association, and of Sir Gilbert Augustus Clayton East, of Hall-place, Maidenhead, in the county of Berks., Bart." At the end of the petition the subscription is "Signed on behalf of the Thames Riparian Owners' association by Gilbert A. Clayton East, president," and then follows the signature, for the second time, and separately from the first signature, "Gilbert A. Clayton East," and the printed petition is endorsed, "Petition of the Thames Riparian Owners' association and Sir Gilbert Clayton East, Bart.," and I submit that Sir Gilbert East, not having been objected to by the promoters, is entitled to be heard.

Freeman (for the promoters): I submit that paragraphs 1 and 4 of the objections, where the word "petitioners" is used, relates not only to the association, but also to Sir Gilbert East. Moreover, Sir Gilbert East does not allege that he is injured in any way by the bill.

Mr. CHANDOS-LEIGH: He alleges that he is a riparian owner, and the petitioner objects to the alteration of the Thames conservancy board by the addition of new members.

Freeman: The objection I submit must correspond with the heading of the petition as put in the votes. This is a purely technical objection, and I will therefore ask Mr. Cripps, parliamentary agent to the promoters, to explain.

Cripps (parliamentary agent to the promoters): The universal practice in lodging objections to *locus standi* is to refer in the notice of objections to the petitioners as entered on the votes of the day, and the petition was there entered as "The Thames Riparian association," Charles E. Baker.

The CHAIRMAN: We must take it that the person who prepared the objections to *locus standi* had the petition before him, and therefore must have also seen that it was also signed by Sir Gilbert East, and as his *locus standi* has not been objected to therefore the technical objection must prevail, and his *locus standi* must be allowed, and the *locus standi* of the Thames Riparian association disallowed.

Locus Standi of the Thames Riparian Owners' association *Disallowed*.

Locus Standi of Sir Gilbert East, Bart., *Allowed*.

Agent for petitioners (9), *Charles E. Baker*.

Petition of (10) THE MAYOR, ALDERMEN, AND COMMONS OF THE CITY OF LONDON.

London County Council—Power to Regulate Erection of Dwelling Houses on Low-Lying Land—Sky Signs—Corporation as Owners of Property—Prevention of Epidemic Diseases—Corporation as Port Sanitary Authority—Re-arrangement of Wards within City—Power to County Council to expend County Rate on Enquiries relating to Water Supply and Markets—Ratepayers—Representation.

The *locus standi* of the corporation of the city of London was conceded against clauses 3 to 7 (inclusive) of the bill, which altered the constitution of the Thames and Lee conservancy boards. The corporation also claimed to be heard against clauses 8 to 12 (inclusive) of the bill, which prohibited the erection of dwelling-houses on low-lying lands, except in accordance with regulations to be framed by the county council; against clauses 16 and 17 of the bill relating to epidemic diseases; against clause 19, empowering the county council to re-arrange the wards of any parish within the county of London; and against clause 21 which amended the London Sky Signs Act, 1891. After some discussion the *locus standi* of the petitioners was conceded against clauses 8 to 12, and clause 21 of the bill in so far as those clauses affected property belonging to the corporation, and a *locus standi* was also conceded to the petitioners as the port sanitary authority of London. With regard to clause 19 (re-arrangement of wards) counsel for the promoters contended that the area to which it applied, namely, "the county of London," and not the administrative county, did not include the city of London, and therefore the petitioners were not affected by it; but the Court allowed the petitioners a *locus standi* against the clause to ask the Com-

mittee on the bill to make it clear, if they thought fit to do so, that the city of London was excluded from the operation of the clause. The petitioners further claimed to be heard against clause 15 of the bill, which repealed certain sections of existing Acts, and which, taken with clauses 28 and 30, gave the council power to expend an unlimited amount upon investigations relating to water supply and markets, the corporation (with reference to the latter) claiming a special right to be heard as the market authority of London. It was objected as in the case of (1, 2 and 3) the petitioning water companies that the corporation were only interested as ratepayers of the administrative county of London, in the expenditure of the county rate authorised by these clauses, in which capacity they were represented by county council:

Held, that the petitioners were entitled to a *locus standi* as claimed, except as against clauses 15, 28, and 30 of the bill.

The *locus standi* of the petitioners (10) was objected to on the following grounds: (1) the petition does not allege, nor is it the fact that any lands or property of the petitioners can be taken under the powers of the bill; (2) the earlier parts of the petition refer to the proposals of clause 3 of the bill as to increasing the number of the conservators of the river Thames, but the petitioners are represented on the Thames conservancy board, and the Thames conservancy board are the proper party to be heard with respect to this matter and not the corporation; (3) the London County Council, the promoters, object on similar grounds to the claim of the petitioners to be heard against clause 5, the proper party to be heard against this clause is the Lee conservancy board; (4) in so far as the petitioners allege that they or the citizens of the city of London are injuriously affected by the bill, the London County Council contend that (except as hereafter mentioned) the petitioners are affected in no different manner to that in which other ratepayers and inhabitants of the administrative county of London are affected, who are the constituents electing the London County Council and are thus represented by the London County Council; (5) there is nothing in the bill which affects or is alleged

to affect the mayor, aldermen and commons of the city of London otherwise than in the same manner as other inhabitants and ratepayers of the administrative county; (6) as regards paragraphs 6 and 7 of the petition it is not alleged, nor is it the fact that the powers stated to have been refused by Parliament were refused on account of the opposition of the petitioners, on the contrary, these powers were granted by a Select Committee of the House of Commons but were afterwards omitted on discussion in the House; (7) as regards clauses 8 to 12 of the bill, the London County Council deny that these clauses affect any lands of the petitioners, and the petition does not state where any lands alleged to be affected by this part of the bill are situate or in what way they will be affected; (8) as regards clause 15 of the bill, which is dealt with in the petition in paragraphs 11 to 13, the promoters do not admit the accuracy of the statements of the petitioners, but even if they are accurate, the promoters contend that the limitations of these clauses are limitations in the interests of the general ratepayers of the administrative county, that the petitioners are in no way concerned in them, and that if they are concerned in them it is in the capacity of ratepayers, in which capacity they are represented by the London County Council; (9) as regards paragraphs 19 and 20 of the petition the promoters object on similar grounds, namely, that the petitioners are not entitled to be heard in respect of clauses limiting or authorising expenditure out of the county rate; (10) as regards clauses 16 and 17 of the bill and paragraphs 21 to 24 of the petition, the promoters deny that the petitioners are affected as suggested, but if it can be shown that in the capacity of port sanitary authority their powers are limited or affected by anything contained in clauses 16 or 17 the promoters admit their *locus standi* in relation thereto; (11) the petitioners are not affected by clause 19 of the bill; (12) as regards clause 21 and paragraph 27 of the petition the promoters admit that the petitioners are entitled to be heard as regards the effect of the clause upon any land or buildings belonging to them, but they are not entitled to be heard generally as against the London County Council in respect of the rights of private individuals in matters of taste and decoration or in respect to the use to which owners of property (other than the petitioners) may put that property; (13) the petition does not disclose nor is it the fact that the petitioners have any such interest in the subject matter, or that their property or rights will be interfered with by the powers proposed to be conferred in such manner as to

entitle them, according to the practice of Parliament, to be heard on their said petition.

Griffiths (for petitioners (10)): The *locus standi* of the petitioners is allowed as regards representation on the conservancy boards of the Thames and Lee, that is against clauses 3 to 7 of the bill, but it is objected to as regards several other matters. The promoters say that we are injuriously affected by the bill in no different manner to that in which other ratepayers and inhabitants of the administrative county of London are affected, who are the constituents electing the London County Council and are therefore represented by the London County Council. We ask for a *locus standi* against clauses 8 to 12 of the bill, which prohibit the erection of dwelling houses on low-lying land, *i.e.*, land below the level of Trinity high-water mark, or which is subject to flooding, except in accordance with regulations to be framed by the county council, and also against clauses 16 and 17, which provide that the council shall hold enquiries in relation to epidemic diseases with a view to the framing of regulations for their prevention, and against clause 21 which amends the London Sky Signs Act, 1891.

Freeman (for promoters): We believe that clauses 8 to 12 of the bill do not apply to any of the petitioners' property, but if they have any property affected by these clauses, we concede them a limited *locus standi* as owners and not as representing the city of London. As regards clauses 16 and 17 we will allow the petitioners a *locus standi* as the port sanitary authority, and, with reference to clause 21 dealing with sky signs, we are willing that as regards their own property they should be heard, but we object to their being heard on the general question as to the effect on the public of the proposed alteration of the definition of "sky signs."

Griffiths: The other clauses against which we ask to be heard are clauses 15, 28, and 30, which provide for the repeal of certain sections in former Acts, and the making of investigations, the raising of money on capital account, and power to pay the costs of inquiries under the bill out of the county rate, and clause 19, which gives the council power to re-arrange wards in parishes. Clause 15, after enacting that three sections of former Acts shall be repealed, provides "that from and after the passing of this Act the council shall have power to obtain such advice and assistance to make such investigations and to carry on such negotiations on any subject as they may consider desirable in the public interest." The sections it is proposed to repeal, are, first, sect. 38 of

the London Council [General Powers] Act, 1890, which section was opposed by the corporation, and an agreement was come to that £5,000 should be allowed to be expended by the county council in making investigations with regard to water. The second section proposed to be repealed by this bill is sect. 70 of the London Council [General Powers] Act, 1891, which provided that "it shall be lawful for the council from time to time to prosecute and conduct enquiries and negotiations relative to such existing markets and market rights as are not the property of or under the control of the mayor, aldermen, and commons of the city of London, and the expediency of establishing new markets in or near the administrative county of London, and any matters relative or incidental thereto, and to pay out of the county fund the costs and expenses of such inquiries not exceeding £1,000." That clause was agreed between the promoters and ourselves, and the London County Council now propose to repeal it, and to give themselves a general power of enquiry, and we submit that we, who are the market authority for the city and seven miles round, ought to be allowed to be heard against it.

The CHAIRMAN: The promoters wish to make investigations with regard to markets in the city as well as elsewhere, but this is not a bill to take away any of the rights of the corporation of London. The question is, therefore, whether it is not time enough for the petitioners to be heard when the promoters come after making investigations, and seek to disturb the existing state of things.

Mr. CHANDOS-LEIGH: Are you in a different position as regards enquiries with respect to markets to that of the water companies as regards enquiries with respect to water?

Griffiths: Yes, for one reason, because we are the market authority of London. I submit further that the promoters were going outside the powers given them by statute in proposing clause 70 of the Act of 1891, because market enquiries are not within the purview of the Metropolis Local Management Act, 1855, and therefore we had a *locus standi* to oppose that clause, and that we have a right to oppose the repeal of it by the present bill. We represent the ratepayers of the city of London, and we submit that if the London County Council promote a bill which goes outside the powers given them by statute we are entitled to be heard against the bill. The third section which it is proposed to repeal by this bill is sect. 3 of the London Water Act, 1892. That Act was promoted jointly by the promoters and ourselves, and we had the control of the bill and have in fact paid the costs

of it. The provision of sect. 3 and the sum of money to be expended thereunder were a matter of agreement between the petitioners and the London County Council, and were inserted solely for our protection as owners of property. This clause enables the promoters to carry on such investigations into our markets as they may consider desirable, and the whole question of our title to our markets might be raised in those investigations, and I submit that we, representing ratepayers who contribute an eighth of the rates are entitled to be heard against it. As regards clause 28 that has been amended by limiting the power to spend £1,000 to electric lighting, and I do not therefore now press my *locus standi* against that clause. As to clause 30, I adopt the argument urged by petitioners (1 and 2) that this clause, together with clause 15, gives the promoters an unlimited power to spend money on these negotiations and investigations and obtaining assistance, and I submit that we are entitled therefore to a *locus standi* against it.

Freeman (in reply): As regards sect. 70 of the Act of 1891, which it is proposed by clause 15 to repeal, when the clause was proposed we did not desire to enquire into the city markets and we inserted words in the clause excluding city markets, but it was not an agreed clause in the sense of its being a concession made by us in order to obtain our bill. The question must therefore now be considered as if now for the first time this proposal was made by us to enquire into markets including city markets. There is nothing I submit in the proposal to enquire into markets generally which entitles the petitioners to be heard merely because they are interested in some of those markets. When we seek to interfere with the markets will be the time for them to be heard and not at the present. The corporation have no *locus standi* as ratepayers to object to money being spent upon an enquiry into the market question, for they are interested only in the same way as other ratepayers in the administrative county of London, and the county council is the responsible body entrusted with the administration of the rates. As regards the London Water Act, 1892, a clause of which it is now proposed to repeal, that bill, as introduced jointly by the petitioners and the promoters, proposed that an authority should be created to deal with the water question, consisting partly of the corporation and partly of the county council. The Committee during the hearing of the bill decided that the county council were the proper authority, and struck out of the bill all reference to the corporation. The corporation thereupon retired and the bill

was proceeded with by the county council, with the consent of the corporation, and passed, clause 3, which it is now proposed to repeal, being in it. The costs of the bill were paid by the corporation in the first instance, but the county council are ready at any time to repay those costs. This question as to water enquiries must be treated, therefore, on the footing that there was no agreement of any kind between the petitioners and ourselves as to the amount to be expended on investigations as to water; this limitation as to amount being in no sense a limitation for the protection of the corporation, but having been inserted by the Committee in accordance with our estimate of the cost of the enquiries for the protection of the ratepayers.

The CHAIRMAN: That is a point upon which I lay great stress.

Freeman: We are the body solely responsible for the administration of the rates, and we propose to spend some of the money in making these investigations, and the petitioners as ratepayers are represented by the promoters, the London County Council, and I submit, therefore, have no right whatever to be heard.

The CHAIRMAN: The *Locus Standi* of the petitioners is *Disallowed* as to clauses 15, 28, and 30.

Griffiths: We ask for a *locus standi* against clause 19 for this purpose. By this clause the promoters seek powers to rearrange the wards in any parish "within the county of London," and to make new provisions as to the election rotation and retirement of vestrymen in such parishes. The county of London is a county formed by the Local Government Act, 1888, sect. 40, sub-sect. 2, which provides that "such portion of the administrative county of London as forms part of the counties of Middlesex, Surrey, and Kent shall on and after the appointed day be severed from those counties, and form a separate county for all non-administrative purposes by the name of the county of London." The promoters make use of the term "county of London" in clause 19, and we wish to obtain a definition as to whether or not these words include the administrative county. The term "county of London" is the county of London for purely non-administrative, that is, judicial purposes, but the promoters, who are the administrative body in this clause, say that over part of the area over which they exercise jurisdiction certain things shall be done, and the county for which the county council are elected is the administrative county.

The CHAIRMAN: This clause is for administrative purposes. Why, then, is the area of it confined to the non-administrative county?

Freeman: So as not to include what is within the area of the corporation, the petitioners. There are two terms in the Act—and "the administrative county" includes the corporation area, and the term the "county of London" does not.

The CHAIRMAN: We *Allow* the Petitioners a *Locus Standi* against clause 19 for the purpose solely of asking the Committee if they think it necessary to make it clear that the city of London is excluded therefrom, and against the other clauses as claimed, except clauses 15, 28, and 30.

Agent for Petitioners (10), *The City Remembrancer*.

Petition of (11) THE COMMISSIONERS OF SEWERS OF THE CITY OF LONDON.

London County Council—Power to Regulate Erection of Dwelling-houses on Low-Lying Lands — Commissioners of Sewers as Local, Rating and Sanitary Authority — Invasion of District — Absence of Jurisdiction of Petitioners over matters dealt with by Bill.

The petitioners were the local, rating, sanitary, and street authority of the city of London, and as such their *locus standi* was conceded against clauses 16 and 17 (relative to epidemic diseases), clause 18 (council may require copies of accounts), and clause 21 (as to sky signs) of the bill; but they also claimed to be heard against clauses 8 to 12 of the bill, which gave the county council power to control and regulate the erection of dwelling-houses upon certain low-lying lands within the administrative county, which included the city, of London. The petitioners claimed to be heard on the ground that the powers conferred by the clauses constituted an invasion of their district and interfered with their rights and powers as the sanitary authority of the city, with reference to buildings and drainage and the construction of sewers, other than the main sewers vested in the county council. The promoters contended that as the petitioners had no powers in respect

of the matters dealt with by clauses 8 to 12, there could be no interference with their rights or jurisdiction, in carrying out the provisions contained in those clauses :

Held, however, that as the local and sanitary authority of the city of London, the petitioners had such an interest in clauses 8 to 12 as to entitle them to be heard upon them before the Committee on the bill.

The *locus standi* of the petitioners (11) was objected to on the following grounds: (1) the petition does not allege, nor is it the fact, that any lands or property of the petitioners can be taken under the powers of the bill; (2) as regards the objections of the petitioners to clauses 15, 28, and 30, the promoters deny that the petitioners have any right to be heard against them. The provisions of these clauses affect the ratepayers within the administrative county of London by whom the promoters are elected, and who are represented by the promoters; (3) as regards clauses 8 to 12, it does not appear from the petition where any lands are situate belonging to the petitioners which would be affected as alleged, but if and so far as the petitioners own any lands to which those clauses would apply the promoters admit that the petitioners are entitled to be heard with reference to their own property; (4) the petition does not disclose, nor is it the fact, that the petitioners have any such interest in the subject matter, or that their property or rights will be interfered with by the powers proposed to be conferred in such manner as to entitle them, according to the practice of Parliament, to be heard on their said petition.

Griffiths (for petitioners (11)): We are the local sanitary rating and street authority of the city of London which is included in the administrative county of London, and as such authority we are responsible for the buildings and drainage in the city. We ask for a *locus standi* against clauses 8 to 12 of the bill, which confers upon the promoters, the London County Council, powers with reference to the erection and regulation of buildings intended to be used wholly or in part as dwelling-houses, erected or to be erected upon land in the county of London below the level of Trinity high-water mark, or subject to flooding, or situate so as not to admit of being drained into the existing main sewerage system of the London County Council. The only powers that the promoters have at the present time over drainage within the city are limited to the

main sewers vested in them. We petition as the local authority who have the control of the drainage, and not, like the corporation, as owners. Clause 8, sub-sect. 3, enables the promoters to take the whole question of drainage from any house, before the sewage comes to the main sewer, into their own hands, and to give directions as to the manner in which the drainage is to be carried out. At the present time they are unable to do this, and by the City of London Sewers' Act, 1848, all houses existing at that date are to be properly drained under the control and supervision of the Commissioners of Sewers, and by a subsequent Act of 1862 it is enacted that no house within the city of London is to be built without drains constructed to the satisfaction of the Commissioners. We submit, therefore, that as the local authority who have the control of the drainage and whose district the promoters now seek to invade—we are entitled to be heard against these clauses. I also claim to be heard against clauses 16, 17, 18, and 21, and the petitioners do not object to our *locus standi* as regards these. With reference to clauses 15, 28, and 30, against which we have also claimed a *locus standi* in our petition, after the ruling of the Court in the case of the petitioners (10), we do not desire to press our claim.

Freeman (for promoters): Clauses 8 to 12 relating to the erection of dwelling-houses on low-lying lands are matters which are not regulated by law at all in the administrative county of London, that is to say, neither in the city of London, nor in the county of London outside the city, and we submit that there should be a uniform system of treating this matter. The owner of the property is the only person it affects by limiting his use of the land in certain ways, and by requiring him to deal with his property in a manner to be prescribed by the county council. We do not propose to invade or clash with any powers the petitioners possess at the present time, for they have no powers whatever to deal with this matter, and they cannot prohibit houses being built in such a way as we seek to prohibit them being built under this clause.

The CHAIRMAN: The petitioners in that view of the case might reasonably ask to be before the Committee to say that they should be the persons that should be entrusted with this new power. The *locus standi* of the petitioners against clauses 8 to 12 is allowed, in addition to the *locus standi* conceded to them against clauses 16, 17, 18, and 21 of the bill.

Locus Standi of Petitioners (11) Disallowed, except as against clauses 8, 9, 10, 11, 12, 16, 17,

18, and 21, and so much of the preamble as relates thereto.

Agent for Petitioners (11), *The City Remembrancer*.

Agents for Bill, *Dyson & Co.*

LONDON OPEN SPACES BILL.

Petition of THE GAS LIGHT AND COKE COMPANY.

2nd March, 1893.—(*Before the Right Hon. J. W. MELLOR, Q.C., M.P., Chairman; Mr. SHIRES WILL, Q.C., M.P.; Mr. ROUNDELL, M.P.; Mr. PARKER-SMITH, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

London County Council—Acquisition of Lands used as a Private Garden for Public Recreation Ground—Power to erect Ornamental Buildings on Lands—Gas Company having Pipes laid round Lands in question—Alleged Injury to Mains and Pipes.

The bill provided for the acquisition by the London County Council of various open spaces in London and the neighbourhood, and among others the garden of Lincoln's-Inn-Fields, and for the management and maintenance of the same for the benefit of the public, and contained powers for the erection of ornamental buildings for refreshment rooms, band-stands, and conveniences thereon. The petitioners, the Gas Light and Coke company, alleged possible injury to their pipes and mains in close proximity to the garden, and claimed protective clauses. It did not appear, however, that any pipes belonging to the petitioners were laid in or under the garden, but only in the streets surrounding it, and the bill gave the promoters no power to interfere with any street:

Held, that under these circumstances the petitioners had no *locus standi* against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition

does not allege nor is it the fact that any lands or property of the petitioners can be taken under the powers of the bill; (2) the petitioners after setting out at length a long extract from the preamble and copies of clauses 16, 27, 28, and 29 of the bill, state (paragraph 8) that it appears from the deposited plans that the promoters intend to interfere with mains, pipes, and other property of the petitioners, but the petition does not explain what mains or pipes of the petitioners are referred to, and does not even allege that the bill contains any power to interfere with any such property, mains, or pipes of the petitioners, and it is not the fact that the bill gives any such power; (3) the petitioners appear to object generally to the acquisition by the promoters of the garden in Lincoln's-Inn-Fields, and vaguely suggest that such acquisition would injuriously affect them, but the petition does not disclose or allege how or in what way any injury could result therefrom to the petitioners; (4) the petition does not disclose, nor is it the fact, that the petitioners have any such interest in the subject matter, or that their property and rights will be interfered with by the powers proposed to be conferred in such manner as to entitle them, according to the practice of Parliament, to be heard upon their said petition.

Pope, Q.C. (for petitioners): Clause 16 of the bill transfers the garden in Lincoln's-Inn-Fields to the London County Council, who are to maintain it as an open space and public garden, it being at present vested in and managed by trustees for the use of inhabitants and householders in Lincoln's-Inn-Fields; and clause 28 of the bill provides, "That, subject to the provisions of this Act, any of the lands which may be acquired or managed by the Council under the powers of this Act shall be deemed to be included among the parks, gardens, and open spaces to which the provisions of the London Council [General Powers] Act, 1890, with respect to bye-laws (Parks and Open Spaces) are applicable. The council may place upon any parts of the said lands any such buildings or erections as they may think desirable, with a view to the utilisation thereof for the recreation and enjoyment of the public." This clause gives the promoters power to erect anywhere at their discretion buildings that may interfere with our mains and pipes. We do not claim any right under the soil of Lincoln's-Inn-Fields garden itself, but we say that if the promoters exercise the powers given by this bill by erecting buildings on the margin of the garden, those buildings might interfere with our mains in the street on that margin.

Mr. CHANDOS-LEIGH: In your petition you claim a *locus standi* against the whole bill.

Pope: We do not wish to oppose the maintenance of open spaces by the council, we only ask for a *locus standi* to protect our mains and pipes. The petitioners have been granted a *locus standi* to protect their pipes and mains against the *London Streets Removal of Gates Bill* of this Session (*infra*, p. 307) for the removal of obstructions in streets, including certain walls, and we submit that we should be allowed a *locus standi* to ask for similar protection against any injury that may be caused to our mains and pipes by digging foundations for the buildings proposed to be authorised by this bill.

Cripps, Q.C. (for promoters): I submit that the petitioners are not entitled to even a limited *locus standi* against this bill which cannot in any way affect them. All the bill proposes to do is to transfer private property from the Lincoln's-Inn-Fields trustees to us, and the powers taken are to erect buildings in the garden, where the petitioners have no mains or pipes, nor any right to place them. In no instance has any authority owning gas or water pipes been allowed a *locus standi* against an *Open Spaces Bill* on the ground of apprehended injury to pipes or mains.

Mr. SHIRESS WILL: Might not the promoters by building operations interfere with the pipes of the petitioners, and if there is any prospect of that, are they not entitled to go before the Committee and ask to be protected? Otherwise the promoters might plead the sanction of Parliament for what they did, though they might injure the petitioners' pipes.

Cripps: No. We do not affect the common law or statutory rights of the petitioners.

Mr. BONHAM-CARTER: What protection has the gas company against any damage which may arise by the ordinary alteration of a road by the road authority?

Pope: None, provided the statutory powers conferred upon the authority are used without negligence, but if a private owner did anything without statutory authority which caused damage to the pipes, damages would be recoverable against him.

Cripps: We do not seek to put the petitioners in a worse position than they are in at present; and if we attempted to interfere with their statutory rights we could be restrained from doing so. I submit the petitioners are not entitled to a *locus standi* merely because there may be a possibility of injury. Against the *Vauxhall Park Bill*, 1888 (Rickards & Michael, 229) on this same point the petitioners were not allowed to be heard.

The CHAIRMAN: This bill proposes to give the promoters certain statutory rights. If the promoters exercise these rights without negligence, would not the statute be an answer to an action for damages?

Pope: Yes, if the powers given by a statute are exercised without negligence the possessor of those powers is protected against actions to which anyone doing the same thing without statute might be liable.

Cripps: If a private owner acting within his legal rights and not interfering with any statutory right of the gas company, in carrying out some work, injured the company in any way, he would only be liable if negligent. In the same way if we, acting negligently, injured the gas company, or if we interfered with their statutory rights, we should be liable. There is no difference in the two cases.

The CHAIRMAN: Does not the principle laid down in the case of *Brand v. The Hammersmith and City Railway Company* (4 H.L. 171) apply here? If in the exercise of these powers to erect buildings and do such things as may be necessary for the buildings you injured the mains of the petitioners without acting negligently, do you suggest that the statute would not be an answer?

Cripps: It would not be an answer if we acted negligently. The object of the bill is merely to enable us to use the public money to do an act which otherwise we could not do, but the legal position of the authority that does the work, whether it is a private owner or the county council, is the same as between such authority and the petitioners. In order to give the petitioners a *locus standi* they must show some interference with these statutory or other rights by the powers proposed to be conferred by the bill.

Mr. CHANDOS-LEIGH: In the case of the *London County Council [General Powers] Bill*, 1892 (Rickards & Saunders, 204), providing for the construction of the Cromwell-road bridge, a *locus standi* was allowed to the petitioners on the ground that there might be an alteration in the levels of the streets. Here there might be an interference consequent on the erection of these buildings.

Cripps: That was a street improvement bill, and in such bills the petitioners are entitled to ask for protection, because powers are taken to interfere with the streets, which powers may be inconsistent with the right vested in the petitioners. There is no such interference here; this is a simple transfer of the power now vested in the trustees to the promoters.

The CHAIRMAN: At present the trustees in whom the gardens are vested cannot build upon

Lincoln's-Inn-Fields. The bill would enable the promoters to do so.

Pember, Q.C. (amicus curiæ): That is so under the lease, and under their Acts the trustees are prevented from building on the gardens.

Cripps: I am not aware of any such restriction. I admit that if we take powers which may interfere with the statutory rights of water or gas companies they are entitled to clauses, but there is no suggestion here of any special injury. There is only a suggestion that because Lincoln's-Inn-Fields, which is proposed to be made an open space, borders upon streets in which mains and pipes are laid, therefore, a *locus standi* is to be given to the owners of those pipes.

Mr. PARKER-SMITH: If a building is put up in one corner of Lincoln's-Inn-Fields and damage is done to the mains thereby, would the petitioners be in exactly the same position if the injury was done by a private owner and if it was done by the promoters under this bill?

Cripps: Certainly. The petitioners have statutory rights to lay pipes in the streets with which we do not interfere, and at common law we shall be liable for negligence in the same way as any private owner. All this bill seeks to do is to enable us to expend money on acts, which otherwise would be *ultra vires*, as regards our general powers. We are not in any way seeking to extend our powers against the petitioners.

The CHAIRMAN: The *Locus Standi* of the Petitioners is *Disallowed*.

Agents for the Petitioners, *Wyatt & Co.*

Agents for Bill, *Dyson & Co.*

LONDON STREETS (REMOVAL OF GATES, ETC.) BILL.

Petition of THE GAS LIGHT AND COKE COMPANY.

2nd March, 1893.—(Before the Right Hon. J. W. MELLOR, Q.C., M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Mr. ROUNDELL, M.P.; Mr. PARKER-SMITH, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

London County Council—Removal of Gates and other Obstructions from Streets—Gas Company—Disturbance of and Injury to Gas Pipes under Streets—Claim for Protective Clauses.

The object of the bill was the removal of obstructions to traffic in London streets,

and clauses 3, 4, and 5 empowered the London County Council to enter into agreements with the owners of gates, bars, rails, posts, or other obstructions mentioned in the schedule to the bill, for their removal, and failing agreement to remove the same themselves. The petitioners were a gas company having pipes laid in the streets close to many of the obstructions set out in the schedule to the bill, and they alleged that the removal of the obstructions might cause serious injury to their pipes, and claimed to be heard to procure the insertion of protective clauses in the bill. The promoters contended that it would not be possible for them to interfere with the petitioners by the removal of obstructions above ground:

Held, however, that the petitioners were entitled to be heard against clauses 3, 4, and 5 of the bill, and so much of the preamble as related thereto.

The *locus standi* of the petitioners was objected to on the following grounds; (1) the petition does not allege nor is it the fact that any property of the petitioners can be taken under the powers of the bill; (2) the petitioners' claim to be heard appears to be based on allegations that their mains and pipes and services for the supply of gas under or contiguous to gates, bars, posts, rails and obstructions proposed to be removed under the bill may be damaged in the course of the works proposed by the bill; but the bill contains no power to take, remove, alter, or interfere with any such main, pipe, or service; (3) the petition does not disclose nor is it the fact that the petitioners have any such interest in the subject matter or that their property or rights will be interfered with by the powers proposed to be conferred in such manner as to entitle them, according to the practice of Parliament, to be heard on their said petition.

Pope, Q.C. (for petitioners): This is a bill for the removal of gates and other obstructions in certain streets of London. We do not object to the general principle of this bill, but we wish to be heard to ask for clauses to compel the promoters to conduct their work, where there is a risk of interfering with our mains and pipes, in such a manner as to prevent any risk of injury to us. By clause 3 of the bill it is proposed to enact that at any time after the passing of this Act it shall be lawful for the

council, on the one hand, and the owner of each of the gates, bars, rails, posts, or other obstructions mentioned in the schedule to the bill, on the other hand, to enter into and carry into effect an agreement as to the removal of such gate, bar, rail, post, or other obstruction, and for opening the street in which the same is situate to the free and unrestricted use, either of traffic of all descriptions at all times, or of such classes of traffic and at such times as may be defined in such agreement. By clause 4 it is proposed to enact (*inter alia*) that if the council and the owner of any such gate, bar, rail, post, or other obstruction fail to make such agreement, then it shall be lawful for the council at any time to serve notice in writing upon the owner of the gate, bar, rail, post, or obstruction with respect to which he shall have failed to agree with the council requiring him within a time therein stated (not to be less than three months after the date of the notice) to take down and remove the gate, bar, rail, post, and other obstruction to which the notice relates, and to restore and make good the site thereof so that the same shall form part of the footway or roadway of the street. If at the expiration of the time stated in the notice the owner shall have failed to comply therewith it shall be lawful for the council, by their officers and servants, to take down and remove every gate, bar, rail, post, and other obstruction to which any such notice relates, and to restore and make good the site thereof. The removal of gates may mean, and in many cases must mean, the removal of the building connected with the bar, the foundations of which pass beneath the street, involving the breaking up of the street for this purpose. The injury we apprehend is this: if that removal is not conducted under the safeguard of such protective clauses as the Committee may think necessary, carelessness in doing that work may result in injury to our mains and pipes. We desire, therefore, to obtain clauses for the protection of our mains and pipes, in case works below the surface of the road should be necessary.

The CHAIRMAN: You say it is possible that buildings would have to be taken down?

Pope: Yes. There is a gate near Gloucester-square, for instance, which has a toll-house connected with two bars at each side, and it must be contemplated to remove the central building as well as the bars.

Mr. HEALY: To see if it will be necessary to remove any buildings, we must look at the schedule to the bill.

Pope: In the schedule relating to the parish of St. George's, Hanover-square, in many cases

there are "gates and posts across street," and in the parish of St. Luke, under Christopher-street, Finsbury-square, there appears "posts, rails, and wall across entrance from Wilson-street." In the parish of Chelsea, under Lincoln-street, "rails and wall across the northern end," and in respect of this the promoters have served us with notice. The owners of the soil could remove these gates if they liked, and if they did injury to our mains and pipes, they would have to pay damages; but if this Act were passed, and they were removed under agreement with the owners and injury ensued, unless there was negligence, the promoters would contend that we were entitled to no compensation. As a matter of fact, our mains and pipes lie within a foot of the foundation of the structure which would require to be removed.

Mr. CHANDOS-LEIGH: There was the case of the *London County Council Bill*, 1892 (Rickards and Saunders, 204), against which the Gas, Light, and Coke company were given a land-owners' *locus standi*.

Mr. HEALY: Are the petitioners landowners *quâ* any of the localities specified in the schedule?

Pope: Yes, as to all of those localities, and our mains and pipes are below the streets in which the obstructions exist, and I submit that the statutory authority given to us to lay our mains and pipes below the surface of the land affected by this bill gives us the right of land-owners for the purpose of *locus standi*.

The CHAIRMAN: We will hear what the promoters have to say.

Freeman (for promoters): This is a bill for the removal of certain gates, posts, and obstructions set out in the schedule to the bill, all of which, with the exception of one, are on the surface of the ground. We were justified in objecting to the *locus standi* of the petitioners because they asked for a general *locus standi* to argue against the principle of the bill. This, however, they do not now contend for, but we submit that the petitioners are not even entitled to a limited *locus standi*, for none of their property is sought to be taken by this bill, and it is not possible for the promoters to even interfere with their property, for the bill proposes merely to remove certain gates and posts standing on the ground.

The CHAIRMAN: There are three cases of the removal of walls.

Freeman: Those are only little walls upon which the iron railings stand. As to the notice given to the petitioners in the case of *Lincoln-street* there is a difference of level between the two streets, and certain works might be

thought to be necessary, and therefore this notice was served. I submit that the petitioners are not entitled to be heard against this bill.

The CHAIRMAN: The *Locus Standi* of the petitioners is *Allowed* on clauses to enable them to ask for protection for their mains and pipes.

Locus Standi Allowed against clauses 3, 4, and 5, and so much of the preamble as relates thereto.

Agents for Petitioners, *Wyatt & Co.*

Agents for Bill, *Dyson & Co.*

RHONDDA AND SWANSEA BAY RAILWAY BILL. [H. L.]

Petition of THE GREAT WESTERN RAILWAY COMPANY.

12th May, 1893.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Mr. ROUNDELL, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Railway Companies—Power to Construct Additional Railways—Interference with Arrangement as to Running Powers, &c., under previous Act—Competition—Introduction of Passenger Traffic on Mineral Railway—Interference with Running Powers of Petitioners—Complaint against Existing Legislation.

Clause 4 of the bill authorised the promoters to construct two railways, No. 1 and No. 3. The petitioners claimed to be heard against the construction of both railways, but upon different grounds. With regard to railway No. 1 they alleged that its construction would enable the promoters to evade the provisions of an arrangement come to in the previous Session between themselves and the promoters, and embodied in sect. 17 of the Rhondda and Swansea Bay Railway Act, 1892, which arrangement they had regarded as a final settlement of the matters in dispute; that railway No. 1 proposed by the bill was an alternative railway to railway No. 1 authorised by the Rhondda and Swansea Bay Railway Act, 1891, by the construction of which the petitioners would largely benefit in accordance with their arrange-

ments with the petitioners, whereas if railway No. 1 proposed by the bill were constructed, the promoters would have no object in constructing railway No. 1 of the Act of 1891. The petitioners also alleged that the construction of railway No. 1 would create a new local competition between themselves and the promoters:

Held, that the existing status of the petitioners would be so affected by the construction of railway No. 1 as to entitle them to be heard in relation thereto.

The petitioners also claimed to be heard against the construction of railway No. 3 authorised by the bill, on the ground that the object and effect of its construction would be to introduce for the first time passenger traffic from the promoters' railway upon certain railways belonging to the Swansea harbour trustees, over which the petitioners had running powers, and of the mineral traffic upon which they contributed the larger portion. It appeared, however, that the promoters had already power under sect. 30 of the Rhondda and Swansea Bay Railway Act, 1892, to run over and use the railways belonging to the Swansea harbour trustees for traffic of every description, *i.e.*, passenger as well as goods traffic, and the Court *Disallowed* the *Locus Standi* of the petitioners as to railway No. 3.

Pember, Q.C., appeared for the petitioners; *Littler*, Q.C., for the promoters of the bill.

[The arguments turned upon the construction of sect. 17 of the Rhondda and Swansea Bay Railway Act, 1892, and other provisions affecting the existing arrangements between the promoters and the petitioners, and the case was of no value as a precedent.]

Agents for Petitioners, *Mains*.

Agents for Bill, *Rees & Frere*.

SOUTH-EASTERN RAILWAY BILL.

Petition of THE VESTRY OF BERMONDSEY.

9th June, 1893.—(*Before Mr. SHIRESS WILL, Q.C., M.P., Chairman, &c., &c.*)

No person appeared for the petitioners, and their *Locus Standi* was accordingly *Disallowed*.
Worsley Taylor, Q.C., appeared for the promoters of the bill.

Agents for Bill, *Cooper & Sons*.TRAMWAYS ORDER CONFIRMATION
(SOMERTON, KEINTON-MANDEVILLE
AND CASTLE CARY TRAMWAYS
ORDER) (No. 2) BILL. [H. L.]

Petition of J. HUNTLEY THRING.

3rd March, 1893.—(*Before The Right Hon. J. W. MELLOR, Q.C., M.P., Chairman; Mr. SHIRESS WILL, Q.C., M.P.; Sir GEORGE RUSSELL, M.P.; Mr. ROUNDELL, M.P.; Mr. PARKER-SMITH, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Construction of Steam Tramway along Country Road — Owner of Houses in Village, and Residence approached from Road, as Frontager — Injurious Affecting of Property — S. O. 135 [Petitions against Tramway Bills] — Meaning of "Street" in Standing Order.

This was a bill to confirm a Provisional Order authorising the construction of certain tramways, upon which steam and other mechanical power was to be used, one of which tramways passed through the village of A., in which the houses on both sides of the road (twelve in number), with one exception, were the property of the petitioner. The tramway, which passed for two miles along public roads through the petitioner's property, also passed close to the entrance gate to the petitioner's residence, and was to be laid as a double tramway at this point and through the village of A. The petitioner claimed to be heard (1) as a frontager under S. O. 135, both in respect of his residence and the cottages occupied by his tenants in the village of A., and (2) as an owner of property which would

be injuriously affected by the construction of the tramways and the use of steam and other mechanical power upon them. It was objected that he could not be heard (1) under S. O. 135, because the road where it passed his residence and through the village of A. was not a street within the meaning of the Standing Order, nor (2) as a landowner because it was not proposed to take any of his property for the construction of the tramways, which would be laid along public roads under the control of the county council:

Held, however, that S. O. 135 and the meaning of the word "street" in it must be liberally interpreted in cases like the present, and that the petitioner was entitled to a *locus standi* under the Standing Order.

The *locus standi* of the petitioner was objected to on the following grounds: (1) the petition does not allege nor is the fact that any house, shop, warehouse, land, premises or other property of the petitioner is proposed to be compulsorily or otherwise taken or interfered with under the powers of the bill or of the above-named Order; (2) the road from Keinton-Mandeville to Castle Cary is not, nor is any part of it, the property of the petitioner or under his control, but belongs to and is under the control of the public authorities, whose consents have been duly obtained, nor does the tramway pass through the petitioner's property; (3) the said road is not a street within the meaning of S. O. 135 of the House of Commons; (4) the petitioner does not allege that he is the owner, lessee or occupier of any house, shop or warehouse in any street through which it is proposed to construct the tramways or any of them proposed to be authorised by the above-named Order; (5) the petitioner does not allege that the construction or use of the tramways proposed to be authorised by the above-named Order will injuriously affect him in the use or enjoyment of his premises or in the conduct of his trade or business; (6) the residence referred to in paragraph 4 of the petition is not situated on the high road leading from Keinton-Mandeville to Castle Cary, on which the tramways are proposed to be laid, but is situated on a road which ultimately joins the said high road some distance from such residence and is not a private approach drive; (7) the petitioner does not represent the public and is not entitled to appear on their behalf, the local and road

authorities of the district having consented to the construction of the tramways; (8) no rights or interests of the petitioner are interfered with under or affected by the powers of the bill or of the above-named Order, and the petitioner has not and his petition does not allege or show that he has any such interests in the objects of the bill or of the above-named Order as will, according to the practice of Parliament, entitle him to be heard upon any of the grounds of objection contained in his petition.

G. A. R. Fitzgerald (for petitioner): This Provisional Order proposes to authorise the construction of certain tramways, amongst others of a tramway described therein as tramway No 5, which passes through the village of Alford. The petitioner is the owner of the mansion house of Alford and the whole of the parish and village of Alford with the exception of one house. The tramway is proposed to be constructed as a double line, and will go through the village street and also pass directly by the petitioner's gate, by which his house, in which he resides, communicates with the high road, and which, moreover, is the only means of access to his house. The petitioner claims a *locus standi* as a landowner on the ground that this tramway runs along the road for two miles through his property in the sense that he is owner of the subsoil of the highway, and he also claims a *locus standi* under S. O. 135. The tramway runs through Alford village street, which consists of 12 houses, and is, I submit, a street within the Standing Order. In the *Brentford, Isleworth, and Twickenham Tramways Bill, 1879, on the petition of Benjamin B. Reed and Francis T. Bircham* (2 Clifford & Rickards, 140), the *locus standi* was allowed. There the tramway came opposite the end of a wall which formed a portion of a stable, and the present is therefore a much stronger case, for this tramway will interfere with the only means of access to the petitioner's house. In the *Tramways Orders Confirmation (No. 3) (Bury and District, &c.) Bill, 1881, on the petition of the Earl of Derby* (3 Clifford and Rickards, 1), the petitioner was allowed a *locus standi* on the allegation that his property would be damaged by the tramway, and in this present case the petitioner shows that there is a risk of substantial injury to his property, and on this ground is therefore entitled, according to practice, to a *locus standi*. I also cite in my favour the *Tramways Provisional Orders (No. 3) Confirmation (London South District Tramways Orders) Bill, 1882, on the petition of Owners, &c.* (3 Clifford & Rickards, 242). This is more of a street than was the

case in the *Brentford and District Tramways Bill, 1885* (Rickards & Michael, 8).

Balfour Browne, Q.C. (for promoters): The petitioner is not entitled to a landowner's *locus standi*, because no land of his is taken by the bill. It is true that he is the owner of the property on both sides of the road, but the roads are vested in the county council, who have given their consent to the tramways. The petitioner has, moreover, failed to bring his case within S. O. 135, because he must first show that this is a street, and this he has not done. The case of the *Lea Bridge, Leyton and Walthamstow Tramways Bill, 1881, on the petition of* (3) *John Griffin and others* (3 Clifford & Rickards, 73) is directly opposed to his contention.

Mr. CHANDOS-LEIGH: What do you say to Mr. Rickards' remark in the *Brentford, Isleworth and Twickenham Tramways* case which has been cited, "This is not a 'street,' but we must take street to include 'road,' I suppose."

Balfour Browne: When there is a road with a large number of houses close to a large town that may be a continuation of the street, and if it is the tailing out of what is clearly a street, that would be a street, but here there are 12 houses situated along a road in a country district, and I submit that is not a "street" within the Standing Order, and that, therefore, the petitioner is not entitled to a *locus standi*.

The CHAIRMAN: We are indebted to counsel on both sides for having drawn our attention to the cases in which this Court has interpreted the meaning of the word "street" in the Standing Order. No doubt at the time the Standing Order was originally framed tramways were for the most part confined to towns. We are, however, disposed to view the Standing Order as being capable of a more liberal construction, and we are disposed to give that construction to it in the present case, and we, therefore, allow the *locus standi*.

Locus Standi of the Petitioner Allowed.

Agents for Petitioner, *Sherwood & Co.*

Agents for the Provisional Order, *Hargraves and Co.*

WEAVER NAVIGATION BILL.

Petition of MESSRS. BRUNNER, MOND & Co.

9th June, 1893.—(Before Mr. SHIRESS WILL,
Q.C., M.P., Chairman; &c., &c., &c.)

Cripps, Q.C., stated, on behalf of the petitioners, that he did not now propose to argue their case for a *locus standi*, as a motion was to be made in the House itself, which, if successful, would necessarily give the petitioners a *locus standi*.

Pember, Q.C. (for the promoters), agreed that that would be the effect of the motion being agreed to.

Mr. CHANDOS-LEIGH remarked that if the motion were unsuccessful, it would be open to the petitioners to take what course they might think necessary, and the Court allowed the matter to stand over without pronouncing for or against the *locus standi* of the petitioners.

Agents for Petitioners, *Taylor, Hoare & Box.*

Agents for Bill, *Dyson & Co.*

END OF REPORTS OF 1893.

INDEX OF CASES

(BILLS AND PETITIONS)

OF THE SESSIONS 1890-91-92-93, REPORTED IN PARTS I. AND II.
OF THIS VOLUME OF REPORTS AND IN THIS PART.

	PAGE
AIRE AND CALDER AND RIVER DUN NAVIGATIONS JUNCTION CANAL BILL, 1891 (H.L.).	
<i>Petition of</i> OWNERS AND MASTERS OF RIVER CRAFT PLYING ON THE RIVERS HUMBER AND TRENT AND THE SHEFFIELD AND SOUTH YORKSHIRE NAVIGATION, COMMONLY CALLED THE SHEFFIELD AND KEADBY CANAL, BETWEEN HULL AND SHEFFIELD AND INTERMEDIATE PLACES ON THE SAID RIVERS AND NAVIGATION, AND THE AMALGAMATED SOCIETY OF LIGHTERMEN AND WATERMEN OF THE RIVER HUMBER	77
ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY BILL, 1890 (H.L.).	
<i>Petition of</i> (1) THE RHYMNEY RAILWAY COMPANY	1
,, (2) THE TAFF VALE RAILWAY COMPANY	3
ASHTON-UNDER-LYNE CORPORATION BILL, 1893.	
<i>Petition of</i> (1) THE AUDENSHAW LOCAL BOARD OF HEALTH	237
,, (2) THE CHESHIRE COUNTY COUNCIL	237
AYR HARBOUR BILL, 1890.	
<i>Petition of</i> (1) THE ARDROSSAN HARBOUR COMPANY; AND (2) THE DUKE OF PORTLAND	5
BARRY RAILWAY BILL, 1893.	
<i>Petition of</i> (1) THE GREAT WESTERN RAILWAY COMPANY	240
,, (2) THE NATIONAL TELEPHONE COMPANY	242
BEVERLEY AND EAST RIDING RAILWAY BILL, 1890.	
<i>Petition of</i> THE SCARBOROUGH, BRIDLINGTON, AND WEST RIDING RAILWAY COMPANY	10
BILSTON COMMISSIONERS WATER BILL, 1890.	
<i>Petition of</i> THE GUARDIANS OF THE POOR OF THE SEISDON UNION	11
BLACKPOOL IMPROVEMENT BILL, 1892.	
<i>Petition of</i> THE NATIONAL TELEPHONE COMPANY	167
BRADFORD CORPORATION WATER BILL, 1892.	
<i>Petition of</i> THE LIVERSEDGE LOCAL BOARD	169
BRITON MEDICAL AND GENERAL LIFE ASSOCIATION BILL, 1890.	
<i>Petition of</i> (1) GEORGE MORLEY	11
,, (2) BERNARD BOALER	11
BURRY PORT AND GWENDREATH VALLEY RAILWAY BILL, 1891 (H.L.).	
<i>Petition of</i> (1) THE LOCAL BOARD OF HEALTH FOR THE DISTRICT OF THE BOROUGH OF LLANELLY	81
,, (2) THE LLANELLY HARBOUR AND BURRY NAVIGATION COMMISSIONERS	81
,, (3) THE GREAT WESTERN RAILWAY COMPANY	81

	PAGE
BUTE DOCKS (CARDIFF) BILL, 1890 (H.L.).	
<i>Petition of</i> (1) THE BARRY DOCKS AND RAILWAYS COMPANY	12
" (2) THE ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY COMPANY, AND OF THE NEWPORT (ALEXANDRA) DOCK COMPANY, LIMITED	12
" (3) THE GREAT WESTERN RAILWAY	14
" (4) THE PONTYPRIDD, CAERPHILLY AND NEWPORT RAILWAY COMPANY ..	16
" (5) LORD TREDEGAR	17
BUXTON LOCAL BOARD BILL, 1892.	
<i>Petition of</i> (1) SAMUEL HYDE AND WILLIAM BLACKWOOD	171
" (2) THE LEEK AND MOORLANDS BUILDING SOCIETY	171
CALEDONIAN RAILWAY (ADDITIONAL POWERS) BILL, 1891.	
<i>Petition of</i> THE NORTH BRITISH RAILWAY COMPANY	87
CENTRAL LONDON RAILWAY BILL, 1891	90
CORK AND FERMIOY AND WATERFORD AND WEXFORD RAILWAY BILL, 1890.	
<i>Petition of</i> (1) THE GREAT SOUTHERN AND WESTERN RAILWAY COMPANY	19
" (2) THE NEW ROSS HARBOUR COMMISSIONERS AND MERCHANTS, INHABITANTS, &C., OF NEW ROSS	20
" (3) THE WATERFORD BRIDGE COMMISSIONERS	23
CROYDON AND CRYSTAL PALACE RAILWAY BILL, 1890.	
<i>Petition of</i> THE SOUTH-EASTERN RAILWAY COMPANY	25
DUBLIN SOUTHERN DISTRICT TRAMWAYS BILL, 1893 (H.L.).	
<i>Petition of</i> THE DUBLIN, WICKLOW, AND WEXFORD RAILWAY COMPANY	242
DUNDEE EXTENSION, POLICE, IMPROVEMENT AND TRAMWAYS BILL, 1892.	
<i>Petition of</i> BUTCHERS AND FLESHERS IN DUNDEE AND LOCHEE AND OTHERS	174
DUNDEE HARBOUR BILL, 1892 (H.L.).	
<i>Petition of</i> (1) THE HARBOUR TRUSTEES OF ABERBROTHWICK	178
" (2) THE PROVOST, MAGISTRATES, AND TOWN COUNCIL OF ABERBROTHWICK, OR ABERROATH, AS SUCH, AND AS CREDITORS OF THE HARBOUR TRUSTEES OF ABERBROTHWICK, AND OF THE PERSONS HERETO SUBSCRIBING BEING ALSO CREDITORS OF THE SAID TRUSTEES	178
EAST GRINSTEAD GAS AND WATER BILL, 1892.	
<i>Petition of</i> OWNERS, LESSEES AND OCCUPIERS IN THE DISTRICT OF FOREST ROW, IN THE PARISH OF EAST GRINSTEAD	181
EAST STONEHOUSE WATER BILL, 1893.	
<i>Petition of</i> (1) THE DEVONPORT WATER COMPANY	246
" (2) THE CORPORATION OF PLYMOUTH	248
EDINBURGH CORPORATION TRAMWAYS BILL, 1893.	
<i>Petition of</i> (1) THE EDINBURGH STREET TRAMWAYS COMPANY	250
" (2) THE COUNTY COUNCIL OF MIDLOTHIAN	254
" (3) THE CALEDONIAN RAILWAY COMPANY	256
EDINBURGH IMPROVEMENT BILL, 1893.	
<i>Petition of</i> THE NATIONAL TELEPHONE COMPANY	259
EDINBURGH MUNICIPAL AND POLICE BILL, 1891.	
<i>Petition of</i> (1) THE PAROCHIAL BOARD OF ST. CUTHBERT'S COMBINATION, EDINBURGH, AND ANDREW FERRIER, INSPECTOR OF POOR, FOR AND ON BEHALF OF THE SAID COMBINATION	91
" (2) THE PAROCHIAL BOARD OF THE CITY PARISH OF EDINBURGH	91
" (3) THE SCHOOL BOARD OF EDINBURGH	96
" (4) THE EDINBURGH STREET TRAMWAYS COMPANY	98
" (5) THE CORPORATION OF LEITH	99
" (6) THE EDINBURGH AND LEITH HERITABLE PROPERTY ASSOCIATION, THE EDINBURGH AND LEITH MASTER BUILDERS' ASSOCIATION, THE EDINBURGH AND LEITH HOUSE FACTORS' ASSOCIATION, AND OF INDIVIDUAL OWNERS OF PROPERTY, RATEPAYERS AND OTHERS IN THE CITY OF EDINBURGH	99

	PAGE
EDINBURGH STREET TRAMWAYS BILL, 1892 (H.L.).	
<i>Petition of THE LORD PROVOST, MAGISTRATES, AND COUNCIL OF THE CITY OF EDINBURGH</i>	184
EDINBURGH STREET TRAMWAYS BILL, 1893.	
<i>Petition of</i> (1) THE EDINBURGH AND DISTRICT WATER TRUST	262
" (2) THE EDINBURGH AND LEITH CORPORATION GAS COMMISSIONERS ..	262
ELECTRIC LIGHTING PROVISIONAL ORDERS (No. 11) CONFIRMATION BILL (CHATHAM, ROCHESTER, AND DISTRICT, ELECTRIC LIGHTING ORDER) 1890.	
<i>Petition of</i> WALTER RICHARD SOLMAN	26
FISHGUARD BAY RAILWAY AND PIER BILL, 1893 (H.L.).	
<i>Petition of</i> JAMES OKELL	264
FLEETWOOD IMPROVEMENT BILL, 1893.	
<i>Petition of</i> RICHARD EDMONDSON	266
FOLKESTONE PIER AND LIFT BILL, 1890.	
<i>Petition of</i> RICHARD HAMMERSLEY HEENAN	28
FOLKESTONE, SANDGATE, AND HYTHE TRAMWAYS BILL, 1891.	
<i>Petition of</i> THE SOUTH OF ENGLAND TELEPHONE COMPANY, LIMITED	102
FORFAR AND BRECHIN RAILWAY BILL, 1891.	
<i>Petition of</i> (1) THE PROVOST, MAGISTRATES AND TOWN COUNCIL OF FORFAR, THE EARL OF STRATHMORE, JAMES TAYLOR, AND MANUFACTURERS AND TRADERS IN FORFAR	104
" (2) THE CALEDONIAN RAILWAY COMPANY	108
GARVE AND ULLAPOL RAILWAY BILL, 1890.	
<i>Petition of</i> THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY	30
GLASGOW AND SOUTH-WESTERN RAILWAY (STEAM-VESSELS) BILL, 1891 (H.L.).	
<i>Petition of</i> (1) THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY	111
" (2) THE CALEDONIAN RAILWAY COMPANY	111
" (3) THE CLYDE STEAMSHIP OWNERS' ASSOCIATION AND OTHERS	115
GLASGOW AND SOUTH-WESTERN RAILWAY BILL, 1892 (H.L.).	
<i>Petition of</i> THE PROVOST, MAGISTRATES AND COUNCIL OF THE ROYAL BURGH OF IRVINE	187
GLASGOW AND SOUTH-WESTERN RAILWAY (No. 2) BILL, 1892.	
<i>Petition of</i> THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY AND THE ARDROSSAN HARBOUR COMPANY	190
GLASGOW CORPORATION BILL, 1890.	
<i>Petition of</i> THE PARTICK, HILLHEAD AND MARYHILL GAS COMPANY, LIMITED	31
GLASGOW CORPORATION WATER BILL, 1892.	
<i>Petition of</i> THE CALEDONIAN RAILWAY COMPANY	191
GLASGOW SOUTH SUBURBAN RAILWAY BILL, 1891	117
GLASGOW, YOKER AND CLYDEBANK RAILWAY BILL, 1892.	
<i>Petition of</i> (1) THE LANARKSHIRE AND DUMBARTONSHIRE RAILWAY COMPANY	191
" (2) THE CALEDONIAN RAILWAY COMPANY	191
" (3) THE MAGISTRATES AND POLICE COMMISSIONERS OF THE BURGH OF CLYDEBANK	193
GLASGOW, YOKER AND CLYDEBANK RAILWAY BILL, 1893.	
<i>Petition of</i> THE CORPORATION OF GLASGOW	269
GREAT NORTH OF SCOTLAND RAILWAY BILL, 1890.	
<i>Petition of</i> (1) OWNERS, &C., IN THE VICINITY OF ELGIN	34
" (2) JAMES SIMPSON	34
" (3) THE CORPORATION OF INVERNESS	34

	PAGE
GREAT NORTH OF SCOTLAND RAILWAY BILL, 1893.	
<i>Petition of</i> THE CORPORATION OF ABERDEEN	269
GREAT WESTERN RAILWAY BILL, 1891.	
<i>Petition of</i> (1) THE TAFF VALE RAILWAY COMPANY	117
" (2) THE BARRY DOCKS AND RAILWAY COMPANY	120
GREENOCK CORPORATION BILL, 1893.	
<i>Petition of</i> (1) THE CLYDE NAVIGATION TRUSTEES	270
" (2) THE CORPORATION OF GLASGOW	270
HANDSWORTH (STAFFORD) RECTORY BILL, 1891 (H.L.).	
<i>Petition of</i> INHABITANTS AND CHURCHWARDENS OF HOLY TRINITY, HANDSWORTH ..	123
HIGHLAND RAILWAY (NEW LINES) BILL, 1890.	
<i>Petition of</i> WILLIAM YOUNG	35
HORNSEY LOCAL BOARD BILL, 1893.	
<i>Petition of</i> (1) OWNERS AND LESSEES OF LANDS, &C., IN THE URBAN SANITARY DISTRICT OF HORNSEY, IN THE COUNTY OF MIDDLESEX	276
" (2) THE LONDON COUNTY COUNCIL	278
KRIGHLEY CORPORATION BILL, 1891.	
<i>Petition of</i> THE LOCAL BOARD OF HEALTH FOR THE DISTRICT OF HAMWORTH, IN THE COUNTY OF YORK	125
LANCASHIRE AND DUMBARTONSHIRE RAILWAY BILL, 1890.	
<i>Petition of</i> THE WEST HIGHLAND RAILWAY COMPANY	36
LANCASHIRE, DERBYSHIRE AND EAST COAST RAILWAY BILL, 1891.	
<i>Petition of</i> JOHN PRESTWICH	127
LANCASHIRE AND YORKSHIRE AND LONDON AND NORTH-WESTERN RAILWAYS (STEAM-VESSELS) BILL, 1892.	
<i>Petition of</i> (1) THE BELFAST STEAMSHIP COMPANY	195
" (2) THE GLASGOW, DUBLIN AND LONDONDERRY STEAM PACKET COMPANY..	195
LANCASHIRE AND YORKSHIRE RAILWAY (STEAM-VESSELS) BILL, 1892.	
<i>Petition of</i> (1) THE CITY OF DUBLIN STEAM PACKET COMPANY	197
" (2) THE GLASGOW, DUBLIN, AND LONDONDERRY STEAM PACKET COMPANY	197
" (3) THE STEAMSHIP OWNERS' ASSOCIATION AND THE IRISH STEAMSHIP ASSOCIATION	199
LEA VALLEY DRAINAGE BILL, 1892.	
<i>Petition of</i> THE LONDON COUNTY COUNCIL	202
LEEDS CORPORATION (CONSOLIDATION AND IMPROVEMENT) BILL, 1893 [H.L.]	
<i>Petition of</i> THE NATIONAL TELEPHONE COMPANY	281
LOCAL GOVERNMENT PROVISIONAL ORDER (FOR THE FORMATION OF THE EDMONTON, ENFIELD, SOUTH HORNSEY AND TOTTENHAM JOINT HOSPITAL DISTRICT) CONFIRMATION BILL, 1891.	
<i>Petition of</i> (1) THE SOUTHGATE LOCAL BOARD	127
" (2) THOMAS JAMES MANN AND OTHERS	127
LOCAL GOVERNMENT PROVISIONAL ORDER No. 10 (HALIFAX ORDER) CONFIRMATION BILL, 1892.	
<i>Petition of</i> THE CORPORATION OF BRADFORD	204
LONDON AND NORTH-WESTERN RAILWAY BILL, 1893.	
<i>Petition of</i> THE SALT UNION, LIMITED	284
LONDON AND SOUTH-WESTERN RAILWAY BILL, 1890.	
<i>Petition of</i> THE POOLE BRIDGE COMPANY	36

	PAGE
LONDON AND SOUTH-WESTERN RAILWAY BILL, 1893.	
<i>Petition of</i> RATEPAYERS OF SOUTHAMPTON	287
LONDON, BRIGHTON, AND SOUTH COAST RAILWAY (VARIOUS POWERS) BILL, 1890 (H.L.).	
<i>Petition of</i> WILLIAM DUKE AND OTHERS	39
LONDON COUNTY COUNCIL (GENERAL POWERS) BILL, 1891.	
<i>Petition of</i> THE BRUSH ELECTRICAL ENGINEERING COMPANY AND SIX OTHER ELECTRICAL LIGHTING COMPANIES	130
LONDON COUNTY COUNCIL (GENERAL POWERS) BILL, 1892.	
<i>Petition of</i> THE GAS LIGHT AND COKE COMPANY.. .. .	204
LONDON COUNTY COUNCIL (MONEY) BILL, 1892.	
<i>Petition of</i> THE CORPORATION OF WEST HAM	208
LONDON COUNTY COUNCIL (SUBWAYS) BILL, 1892.	
<i>Petition of</i> THE BOARD OF WORKS FOR THE ST. GILES'S DISTRICT	210
LONDON COUNTY COUNCIL (GENERAL POWERS) BILL, 1893.	
<i>Petition of</i> (1) THE GOVERNOUR AND COMPANY OF THE NEW RIVER, BROUGHT FROM CHADWELL AND AMWELL TO LONDON; THE EAST LONDON WATERWORKS COMPANY; THE COMPANY OF PROPRIETORS OF LAMBETH WATERWORKS; THE COMPANY OF PROPRIETORS OF THE WEST MIDDLESEX WATERWORKS; THE GRAND JUNCTION WATERWORKS COMPANY; THE GOVERNOUR AND COMPANY OF THE CHELSEA WATERWORKS; AND THE SOUTHWARK AND VAUXHALL WATER COMPANY.. .. .	290
" (2) THE EAST LONDON WATERWORKS COMPANY	290
" (3) THE KENT WATERWORKS COMPANY	290
" (4) THE CORPORATION OF WEST HAM AND OTHER LOCAL AUTHORITIES.. .. .	295
" (5) THE ESSEX COUNTY COUNCIL	295
" (6) THE BERKSHIRE COUNTY COUNCIL	295
" (7) THE SURREY COUNTY COUNCIL	295
" (8) THE UPPER THAMES ASSOCIATION	298
" (9) THE THAMES RIPARIAN OWNERS' ASSOCIATION, AND SIR GILBERT CLAYTON EAST, BART... .. .	298
" (10) THE MAYOR, ALDERMEN, AND COMMONS OF THE CITY OF LONDON	300
" (11) THE COMMISSIONERS OF SEWERS OF THE CITY OF LONDON	303
LONDON OPEN SPACES BILL, 1893.	
<i>Petition of</i> THE GAS LIGHT AND COKE COMPANY	305
LONDON STREETS (REMOVAL OF GATES, &c.) BILL, 1893.	
<i>Petition of</i> THE GAS LIGHT AND COKE COMPANY	307
MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (EXTENSION TO LONDON, &c.) BILL, 1891.	
<i>Petition of</i> (1) VISCOUNT PORTMAN.. .. .	130
" (2) OWNERS, LESSEES, AND OCCUPIERS OF LANDS, HOUSES AND PROPERTY IN THE PARISHES OF ST. MARYLEBONE AND ST. JOHN, HAMPSTEAD.. .. .	133
" (3) JOHN WOOLLEY PITT AND THOMAS JOHN PITFIELD AND OTHERS	133
" (4) OWNERS, LESSEES, AND OCCUPIERS IN BROADHURST GARDENS, IN THE PARISH OF ST. JOHN, HAMPSTEAD	136
" (5) GEORGE BOULTBY AND OTHERS, OWNERS, &c., OF PROPERTY IN NOTTINGHAM	139
" (6) THE VICAR AND CHURCHWARDENS OF THE PARISH CHURCH OF ST. MARY, LEICESTER	139
" (7) THE TOWCESTER AND BUCKINGHAM RAILWAY COMPANY.. .. .	140
MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (EXTENSION TO LONDON, &c.) BILL, 1892.	
<i>Petition of</i> W. G. CHAPMAN AND COMPANY	212
MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (VARIOUS POWERS) BILL, 1891.	
<i>Petition of</i> THE GREAT WESTERN RAILWAY COMPANY	140

	PAGE
METROPOLITAN RAILWAY BILL, 1890.	
<i>Petition of</i> (1) THE VESTRY OF MARLBORNE	40
" (2) THE VESTRY OF ST. PANCRAS	40
" (3) THE VISCOUNT PORTMAN	43
" (4) THE REVEREND H. S. EYRE	44
" (5) THE LONDON, BRIGHTON AND SOUTH COAST RAILWAY COMPANY ..	46
" (6) THE GREAT EASTERN RAILWAY COMPANY	46
" (7) THE MIDLAND RAILWAY COMPANY	46
" (8) THE GREAT NORTHERN RAILWAY COMPANY	46
" (9) THE LONDON, CHATHAM AND DOVER RAILWAY COMPANY ..	46
" (10) THE GREAT WESTERN RAILWAY COMPANY	46
" (11) THE METROPOLITAN DISTRICT RAILWAY COMPANY	49
MIDLAND RAILWAY BILL, 1892.	
<i>Petition of</i> JAMES ADDY	213
NELSON CORPORATION BILL, 1891.	
<i>Petition of</i> (1) JOHN BARROWCLOUGH	144
" (2) MESSRS. HENRY HARTLEY AND SONS	147
" (3) OWNERS AND OCCUPERS OF MILLS ON THE RIVER CALDER ..	147
" (4) PADDIHAM AND HAPTON LOCAL BOARD	147
" (5) THE CORPORATION OF BURNLEY	147
NEWCASTLE-UPON-TYNE IMPROVEMENT BILL, 1892.	
<i>Petition of</i> THE WALKER LOCAL BOARD	215
NORTH BRITISH AND GLASGOW AND SOUTH-WESTERN RAILWAY COMPANIES BILL, 1890.	
<i>Petition of</i> (1) SHARP, STEWART AND COMPANY	50
" (2) WAREHOUSEMEN IN GLASGOW	50
" (3) THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY ..	53
" (4) THE SOLWAY JUNCTION RAILWAY COMPANY	53
NORTH BRITISH RAILWAY BILL, 1891.	
<i>Petition of</i> PROPRIETORS, FEUARS, &C., IN DUNDYVAN ROAD, COATBRIDGE ..	151
NORTH-EASTERN RAILWAY (HULL DOCKS) BILL, 1892 (H.L.).	
<i>Petition of</i> (1) THE SOUTH YORKSHIRE COAL OWNERS' ASSURANCE SOCIETY ..	217
" (2) OWNERS OF WHARVES AND WAREHOUSES, AND OTHERS, AT KINOSTON-UPON-HULL	217
NORTH-EASTERN RAILWAY BILL, 1892.	
<i>Petition of</i> THE SOUTH YORKSHIRE COAL OWNERS' ASSURANCE SOCIETY ..	217
PARTICK, HILLHEAD AND MARYHILL GAS AND ELECTRICITY BILL, 1890.	
<i>Petition of</i> COMMITTEE OF RATEPAYERS, GAS CONSUMERS, AND FEUARS IN KELVINSIDE AND OTHERS	53
PONTYPRIDD BURIAL BOARD BILL, 1892.	
<i>Petition of</i> RATEPAYERS AND OTHERS WITHIN THE DISTRICT AFFECTED BY THE BILL ..	221
REGENT'S CANAL, CITY AND DOCKS RAILWAY BILL, 1892.	
<i>Petition of</i> (1) THE CORPORATION OF WEST HAM	224
" (2) THE VESTRY OF ST. PANCRAS	227
RHONDDA AND SWANSEA BAY RAILWAY BILL, 1893 (H.L.).	
<i>Petition of</i> THE GREAT WESTERN RAILWAY COMPANY	309
RIBBLE NAVIGATION BILL, 1890.	
<i>Petition of</i> THE CORPORATION OF SOUTHPORT	56
RICHMOND FOOTBRIDGE (LOCK, &C.) BILL, 1890.	
<i>Petition of</i> (1) THE VESTRY OF HAMMERSMITH	60
" (2) THE BOARD OF WORKS FOR THE WANDSWORTH DISTRICT ..	60
" (3) THE CHISWICK LOCAL BOARD	60
" (4) INHABITANTS AND RATEPAYERS OF MORTLAKE AND RIPARIAN OWNERS ..	60
" (5) THE DUKE OF DEVONSHIRE	60

	PAGE
ROTHERHAM, BLYTH, AND SUTTON RAILWAY BILL, 1891.	
<i>Petition of</i> THE MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY ..	152
RHYMNEY RAILWAY BILL, 1890 (H.L.).	
<i>Petition of</i> (1) THE BARRY DOCK AND RAILWAYS COMPANY	64
" (2) THE TAFF VALE RAILWAY COMPANY	64
" (3) THE PONTYPRIDD, CAERPHILLY, AND NEWPORT RAILWAY COMPANY ..	67
" (4) THE MARQUESS OF BUTE AND THE TRUSTEES OF THE WILL OF THE LATE MARQUESS OF BUTE	67
SAINT BARNABAS CHURCH LIVERPOOL BILL, 1892 (H.L.).	
<i>Petition of</i> INHABITANTS OF THE ECCLESIASTICAL DISTRICT OF ST. BARNABAS ..	229
SHEFFIELD AND MIDLAND RAILWAY COMPANIES' COMMITTEE BILL, 1891.	
<i>Petition of</i> (1) THE SHEFFIELD AND SOUTH YORKSHIRE NAVIGATION COMPANY ..	153
" (2) THE GREAT NORTHERN RAILWAY COMPANY	155
SOUTH-EASTERN RAILWAY BILL, 1890 (H.L.).	
<i>Petition of</i> THE OVERSEERS OF THE POOR FOR THE PARISH OF ST. SAVIOUR'S, SOUTHWARK	68
SOUTH-EASTERN RAILWAY BILL, 1891.	
<i>Petition of</i> THE LONDON, CHATHAM, AND DOVER RAILWAY COMPANY	157
SOUTH-EASTERN RAILWAY BILL, 1893.	
<i>Petition of</i> THE VESTRY OF BERMONDSEY	310
SOUTH YORKSHIRE JUNCTION RAILWAY BILL, 1890.	
<i>Petition of</i> THE NORTH-EASTERN RAILWAY COMPANY	69
STOURRIDGE IMPROVEMENT COMMISSIONERS BILL, 1891.	
<i>Petition of</i> THE STOURRIDGE GAS COMPANY	159
SWINTON AND PENDLERURY LOCAL BOARD BILL, 1892.	
<i>Petition of</i> (1) THE CORPORATION OF SALFORD	231
" (2) THE LOCAL BOARD OF LITTLE HULTON	233
TOTTENHAM AND FOREST GATE JUNCTION RAILWAY BILL, 1890.	
<i>Petition of</i> (1) OWNERS, LESSEES AND OCCUPIERS, ALONG THE LINE OF THE PROPOSED RAILWAY	71
" (2) INHABITANTS OF LEYTON, WANSTEAD, AND WEST HAM	72
TRAMWAYS PROVISIONAL ORDERS CONFIRMATION BILL (No. 2) (BRISTOL TRAMWAYS EXTENSION ORDER), 1891.	
<i>Petition of</i> THE BRISTOL WATERWORKS COMPANY	160
TRAMWAYS ORDER CONFIRMATION (SOMERTON, KEINTON-MANDEVILLE, AND CASTLE CARY TRAMWAYS ORDER) (No. 2) BILL, 1893 (H.L.).	
<i>Petition of</i> J. HUNTLEY THRING	310
WEAR VALLEY EXTENSION RAILWAY BILL 1892 (H.L.).	
<i>Petition of</i> THE CUMBERLAND COUNTY COUNCIL	234
WEAVER NAVIGATION BILL, 1893.	
<i>Petition of</i> BRUNNER, MOND AND CO.	312
WESTERN VALLEYS (MONMOUTHSHIRE) WATER BILL, 1891.	
<i>Petition of</i> (1) THE MONMOUTHSHIRE COUNTY COUNCIL	161
" (2) THE VICAR AND CHURCHWARDENS OF THE PARISH OF MYNYDDISLWYN	163
" (3) THE BLACKWOOD GAS AND WATER COMPANY, LIMITED	164
WHITLAND, CRONWARE AND PENDINE RAILWAY (ABANDONMENT) BILL, 1892.	
<i>Petition of</i> THOMAS JOHN BROWICK	236
WORCESTER AND BROOM RAILWAY (EXTENSION OF TIME) BILL, 1890.	
<i>Petition of</i> THE STRATFORD-ON-AVON, TOWCESTER AND MIDLAND JUNCTION RAILWAY COMPANY	75

INDEX TO SUBJECTS,

TO CASES REPORTED IN THIS PART.

**.* Where a Standing Order is Referred to in the Index, the numbering is that of the Standing Orders [House of Commons] for 1894.*

ABSTRACTION (*See* WATER).

ACCESS (*See* ROAD).

ACTS, PUBLIC (*See* STATUTES).

AGREEMENT (*See* RAILWAY (2), TRAMWAY).

ALLEGATION (*See* PRACTICE).

AMALGAMATION (*See* RAILWAY (1), TRAMWAY).

AMBIGUITY (*See* PRACTICE).

AQUEDUCT (*See* RESERVOIR, WATER).

AREA (*See* GAS, WATER).

ASSOCIATION (*See also* TRADE),
voluntary — for election of river conservators opposing proposed alterations
in constitution of conservancy board, 298

AUTHORITY (*See* LOCAL BOARD, PRACTICE).

BOARD OF TRADE,
corporation seeking powers to purchase tramways by agreement, and to
work and lease same to third parties, by bill containing no provision for
approval of lease by —, 250

BOROUGH (*See* CORPORATION).

BRIDGE,
provisions for works for electrical power on tramway carried over railway
—, opposed by railway company apprehending injury to —, 256

BURGH (*See* CORPORATION).

CATTLE,
provision in burgh improvement bill for — dépôt, opposed by navigation
trustees and corporation alleging competition, 270

CLAUSE (*See* PRACTICE, SAVING CLAUSES).

COMPANY (*See* GAS, RAILWAY (2)).

COMPETITION (*See also* CORPORATION, RAILWAY (2)),
 amalgamation of tramways and use of electricity thereon, how far an improvement of existing —, 242
 improvement of existing —, by bill for additional water works, opposed by company supplying district, 246
 pier owner opposing establishment of ferry with powers to owners of boats to use landing stage on ground of —, 266
 establishment of cattle depôt in burgh improvement bill, opposed by navigation trustees and corporation alleging —, 270

CONSERVANCY,
 alteration of constitution of — board, by London County Council, opposed by water companies, 290; by county councils and corporation, 295
 proposed alterations in constitution of —, opposed by voluntary association for election of conservators, 298

CORPORATION (*See also* COUNTY COUNCIL, LOCAL BOARD),
 promotion of sewerage scheme by —, opposed by county council alleging "injurious affecting," 237
 claiming a landowner's *locus* in respect of leat crossed by pipes of water company, 248
 powers to purchase tramways by agreement, and to work and lease same to third parties sought by —, without provision for approval of lease by Board of Trade, 250
 purchase of tramways by — beyond district of county council, who alleged injurious affecting of tramways within district, 254
 powers sought by — to pull down houses and interfere with overhead wires, opposed by telephone company as licensees of owners and occupiers of houses, 259
 railway company seeking powers to supply water within the district of supply of —, 269
 bill of — for burgh improvement providing for prevention of smoke nuisance within burgh and port, opposed by navigation trustees and neighbouring corporation, 270
 burgh improvement bill of — providing for establishment of cattle depôt, opposed by navigation trustees and corporation, alleging competition, 270
 consolidation bill enabling — to work tramways, already worked by electricity, opposed by telephone company, 281

COUNTY COUNCIL (*See also* CORPORATION, LOCAL BOARD),
 purchase of tramways by corporation beyond district of —, alleged to injuriously affect tramways within district, 254
 local authority seeking special powers as to local government, opposed by London —, claiming uniformity of legislation, and alleging possibility of main sewerage system being affected, 278
 alteration of conservancy board by London —, opposed by water companies, 290, by county councils and corporation, 295
 corporation as market authority opposing bill of — authorising expenditure of county rate on inquiries as to water supply and markets, 300
 power to regulate erection of dwelling-houses on low-lying lands by —, opposed by commissioners of sewers, 303
 acquisition of private garden by — for public recreation ground, opposed by gas company alleging interference with mains in street, 305
 bill of — for removal of gates and obstructions from streets, opposed by gas company, 307

COVENANT,
 salt union having restrictive — with owners, claiming an interest in lands sought to be acquired for railway sidings, 284

DISTINCT INTERESTS (*See* CORPORATION, INTERESTS, OWNERS, REPRESENTATION).

DISTRICT (*See* GAS, LOCAL BOARD, TRAMWAY, WATER).

DOCK,
 construction of — by railway company opposed by ratepayers, 287

DRAINAGE,
 London County Council, alleging possibility of main — system being affected, opposing bill of local authority, 278

ELECTRICITY (*See* MECHANICAL POWER, TRAMWAY).

FERRY,

establishment of — and power to owners of boats to use landing-stage, opposed by pier owner, 266

FORESHORE,

alleged interference with — rights of pier-owner by bill for establishment of ferry, 266

sale of mudlands on — by corporation to railway for construction of dock, opposed by ratepayers, 287

FRONTAGER,

railway company as — opposing amalgamation of tramways and use of electricity thereon, 242

owner of houses in village as — opposing construction of steam tramway on country road, 310

GAS,

powers to construct works for cable haulage of tramways opposed by — company apprehending injury to pipes, 262

company, alleging injury to mains, opposing powers for acquisition of land by county council, 305

company, claiming protective clauses in bill of county council for removal of gates and obstructions in streets, 307

HARBOUR (*See* dock).

HOUSES,

power to London County Council to regulate erection of — upon low-lying lands opposed by Commissioners of Sewers, 303

INJURIOUS AFFECTING,

sufficiency of allegations of — by county council, opposing bill of corporation for sewerage scheme, 237

alleged — of tramways within district of county council, by purchase of tramways by corporation beyond district, 254

telephone company alleging — by removal of overhead wires in street improvement bill of corporation, 259

contractor of authorised railway with contingent interest therein alleging — by exercise of running powers over same, 264

bill of local authority for special powers of local government opposed by owners and occupiers alleging — of property by increased rates, 276

of telephone company by provisions enabling corporation to work tramways already worked by electricity, 281

alleged — of houses in village, by construction of steam tramway on country road, 310

INJURY (*See* INJURIOUS AFFECTING).

INTEREST,

running powers sought over authorised line opposed by contractor with a contingent — therein, 264

provision in burgh improvement bill for expenses of treatment of infectious cases within port opposed by navigation trustees as affecting shipping —, 270

salt union having restrictive covenants with owners of land sought to be acquired by railway claiming — in land, 284

LAND (*See also* LANDOWNER, OWNERS, ETC.),

acquisition of — by corporation for sewerage purposes alleged to "injuriously affect" county council and neighbouring local board, 237

acquisition of rights over and under —, how far entitling to a *locus*, 284

LANDOWNER (*See also* LAND, OWNERS),
 water company as adjoining owners claiming a *locus standi* as — in respect
 of road in which promoters sought to lay pipes, 246
 corporation claiming a *locus* as — in respect of land proposed to be
 crossed by pipes of water company, 248

LEASE,
 corporation seeking power to purchase tramways and to work and —
 same to third parties, by bill containing no provision for approval of
 — by Board of Trade, 250

LEGISLATION,
 complaint of railway company against existing —, 240
 claim for uniformity of — by London County Council when opposing bill
 of neighbouring local authority, 278

LESSEE (*See* OWNERS).

LOCAL BOARD AND AUTHORITY (*See also* CORPORATION, COUNTY COUNCIL),
 sufficiency of allegations of "injurious affecting" by — opposing
 sewerage scheme of corporation, 237
 additional works sought by — supplying water to a district also included
 in limits of a water company, 246
 corporation claiming landowner's *locus* as owners of leat proposed to be
 crossed by pipes of —, 248
 bill of — for special purposes of local government opposed by owners and
 occupiers within district injuriously affected by increased rates and
 alteration of taxation, 276
 bill of — for special powers as to local government opposed by London
 County Council claiming uniformity of legislation, 278

LOCAL GOVERNMENT,
 special powers of — sought by local authority, opposed by owners and
 occupiers as injuriously affected by increased rates and alteration of
 taxation, 276
 bill of local authority for special powers as to — opposed by London
 County Council claiming uniformity of legislation, 278

LONDON COUNTY COUNCIL (*See* COUNTY COUNCIL).

MARKET,
 corporation as — authority opposing bill authorising expenditure of
 county rate upon enquiries as to water supply and markets, 300

MECHANICAL POWER (*See also* TRAMWAY),
 bill for construction of tramway to be propelled by — opposed by
 telephone company, promoters conceding that term included electricity,
 242

NAVIGATION (*See also* DOCK, PORT),
 — trustees opposing provisions for abatement of smoke nuisance in burgh
 improvement bill of corporation, 270
 provision for cattle dépôt in burgh improvement bill opposed by —
 trustees on ground of competition, 270

NUISANCE,
 provisions for abatement of smoke — within port in burgh improvement
 bill, opposed by navigation trustees, 270

OBJECTIONS (*See* PRACTICE).

OCCUPIERS (*See* OWNERS).

OWNERS, LESSEES, AND OCCUPIERS (*See also* RAILWAY (2)),
 adjoining owners, water company as, claiming a landowner's *locus standi* in respect of road in which promoters sought to lay pipes, 246
 telephone company as licensees of — of houses opposing street improvement bill of corporation, on ground of interference with overhead wires, 259
 local authority seeking special powers of local government opposed by — injuriously affected by increased rates, 276
 — as distinguished from ratepayers, opposing bill of local authority, 276
 salt union having restrictive covenants with — of lands sought to be acquired for sidings, opposing railway bill, 284
 construction of steam tramway on country road opposed by — of houses in village, as frontager, 310

PIPES (*See* GAS, ROAD, WATER).

PIER

owner of — opposing establishment of ferry with power to owners of boats to use landing-stage, 266

PORT (*See also* DOCK),

provision in burgh improvement bill for abatement of smoke nuisance within —, opposed by navigation trustees, 270
 provision relating to infectious cases on board ships within — in burgh improvement bill, opposed by corporation as sanitary authority, 270
 provision for expenses of treatment of infectious cases within — in burgh improvement bill, opposed by navigation trustees as affecting shipping interests, 270

PRACTICE,

right of petitioners to be heard where *locus standi* of other petitioners raising similar objections is conceded, 237
locus standi granted against main clauses authorising use of electrical power, how far entitling to *locus* against subsidiary clauses, 242
 as to joint petitioners when objections refer to only one petitioner, 298
 petitioners allowed *locus* against a particular clause to ask Committee to make meaning clear, 300

PROTECTIVE CLAUSES (*See* SAVING CLAUSES).

RAILWAY (*See also* COMPETITION). (1) AMALGAMATION. (2) COMPANY.

(1) *Amalgamation,*

alleged virtual — by agreement for transfer of railway to working company, 240

(2) *Company,*

agreement for transfer of railway to working —, 240
 opposition of — having traffic arrangements with railway proposed to be transferred by bill, 240
 alleging competition and “injurious affecting” as frontagers, 242
 opposing use of electricity on tramways forming continuous route, 242
 seeking protective clauses for telegraph wires and signals in bill authorising the use of electricity on tramways, 242, 256
 provisions for works for electrical power on tramways carried across railway bridges, opposed by — apprehending injury to bridges, 256
 running powers sought by proposed railway over authorised railway, opposed by contractor with a contingent interest therein, 264
 powers sought by — to construct reservoir and make aqueduct and impound stream, opposed by corporation supplying water to district, 269
 acquisition of lands by — for sidings, opposed by salt union having restrictive covenants against salt working with owners of lands sought to be acquired, 284
 construction of dock by — opposed by ratepayers, 287

- RATEPAYERS** (*See also* CORPORATION, REPRESENTATION),
 owners and occupiers, as distinguished from —, opposing bill of local authority, 276
 opposing construction of dock, how far represented by corporation, 287
- RATES** (*See also* RAILWAY (2)),
 local authority seeking special powers of local government opposed by owners and occupiers alleging "injurious affecting" by increased —, 276
- REPRESENTATION** (*See also* INHABITANTS, RATEPAYERS, &c.),
 county councils and corporation opposing bill for alteration of constitution of conservancy board and claiming additional —, 295
 claim of voluntary association, for promoting efficient representation on conservancy board, to oppose bill altering constitution of board, 298
 alleged — of corporation as ratepayers by county council seeking powers to expend county rate on enquiries as to water supply and markets, 300
- RESERVOIR** (*See also* WATER),
 powers sought by railway company to construct — and aqueduct opposed by corporation supplying water to burgh, 269
- RESIDENTS** (*See* RATEPAYERS).
- RES JUDICATA** (*See* LEGISLATION).
- RIGHT OF WAY** (*See* ROAD).
- RIVER** (*See* CONSERVANCY).
- ROAD,**
 water company as adjoining owners claiming a landowner's *locus standi* in respect of a — in which promoters sought to lay pipes, 246
 gas and water companies apprehending injury to pipes in — by construction of works for cable haulage of tramways, 262
 bill for removal of gates and obstructions from — opposed by gas company, 307
 construction of steam tramway on country — opposed by owner of houses in village as frontager, 310
- ROAD AUTHORITY** (*See* LOCAL BOARD, ROAD).
- SANITARY AUTHORITY** (*See* CORPORATION, COUNTY COUNCIL, LOCAL BOARD).
- SAVING AND PROTECTIVE CLAUSES,**
 telephone company claiming — in bill authorising construction of tramways and use of mechanical power, 242
- SEWERAGE,**
 scheme for — promoted by corporation opposed by neighbouring local board and county council, 237
 London County Council, alleging possibility of main drainage and — system being affected, opposing bill of local authority, 278
- SHIPPING** (*See* INTEREST).
- STANDING ORDERS,**
 132 [Dissenting shareholders to be heard], 264
 134 [Municipal authorities and inhabitants of towns], 237, 270, 295
 134b [County council alleged to be injuriously affected by bill], 237, 254, 278, 295
 135 [Petitions against tramway bills], 242, 310
 163 [No powers of purchase, &c., except after proof of certain matters before the Board of Trade], 240
 171 [No powers to be given to local authority to place or run carriages upon tramways], 250, 281

STATUTES (PUBLIC, CITED),

Burgh Police (Scotland) Act, 1892, s. 384; 270
 Contagious Diseases (Animals) Act, 1878, s. 39; 270
 Divided Parishes and Poor Law Amendment Act, 1876, 278
 Lands Clauses Consolidation Act, 1845, 259
 Metropolis Management Acts, 278
 Poor Law Act, 1879, 278
 Public Health (Scotland) Act, 1867, ss. 52, 54; 270
 Public Health Act, 1875, s. 52; 246
 Public Health Acts, 1875 and 1890, 276, 278
 Railway Clauses Consolidation Act, 1845, s. 77; 284
 Telegraph Act, 1878, 259
 Tramways Act, 1870, ss. 19, 43; 250; s. 30; 262
 Waterworks Clauses Act, 1847, s. 28; 246

STREET (See also ROAD),

meaning of — in S. O. 135 relating to tramway bills, 310

TAXATION,

alteration of — alleged by owners opposing bill of local authority, 276

TELEGRAPHS (See RAILWAY (2)).

TELEPHONE,

claim by — company for protective clauses in bill authorising construction of tramways and the user of mechanical power, 242
 powers sought by corporation to pull down houses for street improvements, bill causing interference with overhead wires, opposed by telephone company as licensees of owners of houses, 259
 consolidation bill enabling corporation to work tramways already worked by electricity opposed by — company, 281

TOLLS (See RATES).

TOWN COUNCIL (See CORPORATION).

TRADE,

Salt Union as — association, having restrictive covenants with owners of lands sought to be acquired by railway company, opposing bill, 284

TRAFFIC (See RAILWAY (2), TRAMWAY).

TRAMWAYS,

bill authorising construction of — and user of mechanical power, opposed by telephone company claiming protective clauses, 242
 railway company alleging competition and "injurious affecting" as frontagers, opposing use of electricity on — forming continuous route, 242

corporation seeking powers to purchase — by agreement, and to work and lease same to third parties, by bill containing no provision for approval of lease by Board of Trade, 250

purchase of — by corporation beyond district of county council, who alleged injurious affecting of — within district, 254

use of electrical power on —, opposed by railway company apprehending disturbance to telegraphs, 256

provisions for works for electrical power on — carried across railway bridges, opposed by railway company apprehending injury to bridges, 256

powers to construct works for cable haulage of —, opposed by gas and water companies apprehending injury to pipes, 262

consolidation bill enabling corporation to work — already worked by electricity, opposed by telephone company, 281

construction of steam — along country road, opposed by owner of houses in village as frontager, 310

TRANSFER (See RAILWAY).

VESTRY (See LOCAL BOARD).

eastern point on the foreshore of your petitioners' district, and the natural ebb of its waters in a receding tide is along the foreshore bounding your petitioners' district. The sewage matter would follow the course of this channel and the action of the tides would, in the opinion of your petitioners, have the effect of casting up and depositing on Penarth flats and the beach adjoining your petitioners' district the solid matter from the sewage, whilst the effluent would be present in the neighbouring waters, thus endangering the health of the inhabitants of and visitors to the district, destroying its amenities as a sea-side resort, and otherwise prejudicially affecting the prosperity of the district." It cannot be said, looking at those allegations, that we are not entitled to be heard against a proposal of that kind.

The CHAIRMAN: I think we have had a similar case before us.

Cripps: Yes; in the case of the *Local Government Provisional Orders (No. 7) (Bingley Order) Confirmation Bill, 1889* (Rickards & Michael, 261).

Pembroke Stephens, Q.C. (for promoters): Let me put my point briefly. My learned friend is very sensitive about sewage, but he need not be because the Penarth sewers at the present moment are here (pointing to the map) already. This being the promenade, their own sewers discharge at a point nearer to themselves than our sewer, as proposed by the bill. What is proposed by us is to shift the point of outfall of the sewage. The sewage of Cardiff goes into the Taff now, only at a different point.

The CHAIRMAN: Your sewage goes into the Taff at a certain point now by parliamentary authority, and you are now coming for parliamentary authority to allow you to make the outfall in a new place.

Stephens: Yes; it is the same injury, the only difference being a difference of degree.

The CHAIRMAN: We are clearly of opinion that the petitioners are entitled to be heard under S. O. 134. That would be against Part IV. of the bill, and so much of the preamble as relates thereto.

Locus Standi of the petitioners *Allowed* against Part IV. of the Bill, and so much of the preamble as relates thereto.

Agents for Petitioners, *Torr & Co.*

Petition of (4) COMMONERS OF COMMON LANDS IN THE PARISH OF CANTREFF.

Construction of Railway across Common Lands—Compulsory Acquisition of Lands—Individual Commoners, Rights of, as Landowners.

Clause 8 of the bill empowered the promoters to maintain a railway for the conveyance of materials in connection with their water-works undertaking across certain common lands, and clause 40 empowered them to acquire compulsorily for that purpose ten acres of the common lands. The petitioners were twenty commoners of the common lands sought to be taken, who signed the petition as individual commoners. It was objected that as individual commoners they had no rights as landowners, and that the number who signed the petition was too small to entitle them collectively to represent the whole body of commoners.

Held, however, that the interest of the petitioners in the common lands sought to be compulsorily acquired under the bill was that of a landowner, and that they were entitled, in accordance with the practice of the Court, to be heard generally against the bill.

The *locus standi* of the petitioners was objected to on the following grounds:—(1) none of the lands or property of the petitioners will be taken or used under the powers of the bill; (2) paragraphs 3, 4, 5, 6, and part of 11 only complain of past legislation, and are not relevant to the bill; (3) the petitioners are not entitled to be heard in respect of commonable rights or easements over the commons in question; (4) even if such rights confer a right to be heard, such right ought only to be given to the body of the persons entitled thereto, and not to individuals, and the petitioners are not sufficient in number to represent the body; (5) the petitioners are not entitled to be heard in respect of any alleged abstraction of water; (6) the petitioners, if entitled to be heard at all, are only entitled to be heard against clause 7 (power to make works and to supply water) and clause 8 (power to maintain railway), and so much of the preamble as relates thereto.

E. H. Lloyd (for petitioners): The petition is headed "The petition of the undersigned, being commoners of common lands in the parish of Cantreff, in the county of Brecon," and is signed by 20 commoners. These common lands consist of about 3,000 acres. Clause 8 of the bill authorises the corporation of Cardiff to maintain a railway across the common, in respect of which the petitioners are commoners for the conveyance of materials in connection with their waterworks undertaking, and for this purpose, by clause 40 of the bill, to acquire ten acres of the common. They also seek power to impound the waters of certain brooks which flow through the common for the purposes of the enlarged reservoir, not authorised by clause 7 of the bill.

Pembroke Stephens, Q.C. (for promoters): Perhaps I might shorten the proceedings by saying this—as regards interference with water, no question will arise. As regards the land proposed to be taken for the railway to be used solely for the construction of the works, a small portion of the common is taken, and the short question is whether the twenty commoners who sign the petition are entitled to be heard as representing the commoners as a whole. The first question is whether they have power to petition as owners of land, the lord of the manor not joining in the petition. The second question is, there being a committee of this body, whether they should not petition through that committee; and the third question is whether they sufficiently represent the district. I admit that the railway will traverse the common.

The CHAIRMAN: You take some land compulsorily from the common?

Stephens: Yes.

The CHAIRMAN: The use of the word "landowner" is sometimes misleading. We give what is called a landowner's *locus* not only to the person who owns the freehold, but to a person having an interest in the land proposed to be taken.

Stephens: No doubt; but the question is whether an individual commoner has any right to petition as a landowner. I have been unable to find any case in which a *locus standi* has been given to commoners as such. There have been cases where a lord of the manor, sometimes easily and sometimes under difficulties, has established his *locus standi*; but as regards commoners, I do not find any case where they have been allowed a *locus standi*.

Lloyd: On the 14th of December, 1893, a parish meeting was held to consider the

Cardiff Corporation Bill, and a committee was appointed to take action with regard to that bill, which committee caused the petition to be prepared; and on the 26th April last a parish meeting was called, which approved of the petition.

Stephens: There may have been parish meetings, and there may have been a committee appointed at one of those meetings, but it is not the committee of the commoners who petition.

Lloyd: A large number of the commoners sign the petition, considering the limited time that was allowed, and the petition received the sanction of the parish meeting held on the 23th April last. We are here as individual petitioners, but the parish has endorsed the action which these petitioners have taken.

Stephens: There is nothing to show that; on the contrary, paragraph 5, in speaking of the proposal to lay an aqueduct across the common, says "Arrangements have been made between the corporation and a committee representing the commoners of the parish of Cantreff for the sale of the easement of laying the said conduit pipe through the common lands for the sum of £16." This is not the petition of any public meeting; it is the petition of the individuals who sign it. For the purpose of the construction of the waterworks, we take power to lay a railway on a certain portion of the common; technically, we take so much land, we do not enclose it, but we do lay a railway on it.

The CHAIRMAN: You have power to take it under the bill.

Stephens: I quite admit that we take enough of the common to construct a railway across it, but we do not take it from these individual petitioners. Until under the Inclosure Acts a commoner has a specific part of a common awarded to him, all that he has the right to is the enjoyment of the common; he has no property in the water or in any individual spot of the land; he has a right to put his sheep on the common and to cut turf and so on; but in the sense of ownership of a particular plot of land, which might be sought to be acquired compulsorily by a particular bill, there is nothing in the practice of this Court which gives to individual commoners an interest in land of such a character as to support a *locus standi*. These commoners might have petitioned by their committee, or they might have had a public meeting with a chairman, who might have signed the petition, as representing the whole body, but they have not done so. Here is a common consisting of 3,000 acres, and the petition is signed by twenty persons.

The CHAIRMAN: I think we may give our decision on this case at once. It is very desirable that any doubt upon this matter should be cleared up. If these petitioners have an interest in land it does not signify whether they are a small number or a large number of the total number of commoners, and in the next place it does not signify that their committee are not here petitioning, and for this very good reason, because each one of them is entitled to petition. It is incontrovertible and cannot be argued to the contrary that a commoner has an interest in land; it is primitive law and abundantly plain. Whatever doubts may have been suggested at any time upon the subject, we are clearly of opinion that these commoners have an interest in land and that therefore they are entitled to appear where part of their common is proposed to be taken compulsorily.

Stephens: I take it you do not propose to give to the commoners in respect to interference with them by the taking of the land for the construction of the railway, power to ramble over all the clauses of the bill.

The CHAIRMAN: We have more than once reconsidered what has been called the "Post" case, that is to say, the case of the *London and North-Western Railway Bill*, 1868, on the petition of the *Lancashire and Yorkshire Railway Company* (1 Clifford & Stephens, 62), and we have come to the conclusion that so well is the practice established of giving persons interested in land a general *locus*, that we thought that it was inadvisable for us to attempt to alter it, and that if it were to be altered it should be done by Parliament making a new Standing Order limiting the *locus standi* in such a case. In this case the *locus standi* will be a general *locus* as in all landowners' cases; but of course the petitioners will be limited by the allegations in their petition, and if they go into matters beyond their petition no doubt the Committee will stop them.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Edwin Andrew & White.*

DUNDEE SUBURBAN RAILWAY (EXTENSION OF TIME) BILL. [H. L.]

Petition of THE PAROCHIAL BOARD OF THE
DUNDEE COMBINATION.

11th July, 1894.—(Before Mr. PARKER SMITH,
M.P., Chairman; Mr. HEALY, M.P.; The
Hon. E. CHANDOS-LEIGH, Q.C.; and Mr.
BONHAM-CARTER.)

*Railway—Extension of time for Construction of
Works—Railways Clauses Act, 1863, Pt. II.—
Local Authority as Purchasers of Lands
required for Railway—Notice to Treat for
Lands prior to Purchase—Injurious affecting
of Hospital erected on Adjoining Lands—
Petitioners as Creditors of Promoters—Special
Circumstances—Alleged Agreements—Insol-
vency of Company—Practice.*

Clause 3 of the bill extended for a period of two years the time limited for the construction of railways authorised by the Dundee Suburban Railway Act, 1884, the period originally fixed for their construction by that Act having been already twice extended by the Dundee Suburban Railway Act, 1889, and the Dundee Suburban Railway Act, 1892. No part of the authorised railway or works had been commenced. The petitioners were the parochial board of three combined parishes, including Dundee, who had in 1890 purchased lands through which a portion of the authorised railway would be constructed in cutting. The vendors of the lands had, at the time of the purchase by the petitioners, received notice to treat from the railway company, and the petitioners had purchased subject to that notice. These lands adjoined other lands belonging to the petitioners, upon which they had erected a hospital for paupers and contemplated erecting other buildings for pauper children. The petitioners alleged that it would be impossible, but for the extension of time proposed by the bill, for the promoters to construct their railway, and contended that they were entitled to be heard against a bill which would enable a railway to be constructed, which must seriously affect the

value of their hospital for the purposes for which it had been built; and they relied (1) upon an agreement between the promoters and their predecessors in title, under which the *locus standi* of the latter was secured against future bills of the company; and (2) upon an agreement entered into between the promoters and themselves, and scheduled to the Dundee Suburban Railway Act, 1892, for the construction of certain accommodation works by the promoters for the benefit of the petitioners. It appeared, however (1), that the petitioners were in no sense parties to the agreement between their predecessors in title and the promoters; and (2) that the agreement confirmed by the Act of 1892 was contingent upon the construction of a portion of the authorised railways, and was not affected by the bill:

Held, that the above agreements did not constitute any special grounds for a *locus standi*, and that the petitioners having received notice to treat, were not entitled, according to the practice of the Court, to a *locus standi* against the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege nor is it the fact that any lands or property of the petitioners are sought to be acquired under the powers of the bill; (2) the paragraphs of the petition numbered 6, 7, 8, 9, 10, and 11 (the accuracy of which the promoters do not admit) do not disclose any facts or circumstances which, according to practice, entitle the petitioners to be heard either against the preamble or the clauses of the bill; (3) the bill does not extend the time for the compulsory purchase of any land belonging to the petitioners, nor does it propose to effect in any manner any agreement between the promoters and the petitioners, or to relieve the promoters from any liability thereunder, or to prevent any such agreement being duly carried into effect; (4) the petitioners are simply creditors of the promoters, and are not entitled to be heard in that or in any other capacity; (5) the allegations with respect to the injurious affecting of the petitioners' property do not constitute a ground of *locus standi*; (6) the petition discloses no ground which

entitles the petitioners to be heard against the bill, according to practice.

Balfour Browne, Q.C. (for petitioners): This is an extension of time bill for works authorised by the Dundee Suburban Railway Act, 1884, similar application having been made and granted under the Dundee Suburban Railway Act, 1889, and the Dundee Suburban Railway Act, 1892. The petitioners are the local board of the combined parishes of Dundee, Liff, and Beuvie, and are the owners of lands which are proposed by the bill to be subjected for an additional two years to the exercise of powers affecting the said lands in a highly objectionable and dangerous manner. These lands were acquired by the petitioners in 1890, six years after the passing of the company's incorporating Act of 1884. The petitioners also own lands immediately adjoining the lands in question, and have constructed upon them a hospital for paupers, and the effect of the construction of the railway will be to seriously affect the value of the hospital for the purposes for which it was built. Our *locus standi* was disputed by the promoters before the House of Lords, but was allowed.

MR. HEALY: When the powers were first renewed in 1889, did you appear and get a *locus standi*?

Balfour Browne: No; we had not then purchased the land, but our predecessors in title did appear; and in 1892 we appeared ourselves, and obtained an agreement in consideration of our withdrawing our petition against the bill, which is scheduled to the Act of 1892, by which the promoters agreed to execute certain works and also to pay our costs which have never in fact been paid. The promoters have already given notice to treat, and if this bill is allowed to pass they will be able to hold over us for a further period of two years the power to take this land. The railway has never been commenced, and the company is utterly insolvent.

MR. HEALY: Was the notice to treat before or after you became possessed of the land?

Balfour Browne: We thought after the notice to treat, and we bought subject to that notice.

THE CHAIRMAN: Do you say that this agreement takes you out of the ordinary position of a man who has bought subject to a notice to treat?

Balfour Browne: Yes; and further, the promoters in 1889 agreed with our predecessors in title that their *locus standi* upon any future bill should not be objected to, and we are in their place, and have a right therefore to be heard. In 1892 it is clear our *locus standi* was conceded, as otherwise the promoters would

not have given us an agreement. They, in fact, bought off our opposition for two years, and we are now in the same position as we were then, and are therefore entitled to a *locus standi*.

Mr. CHANDOS-LEIGH: You admit but for the agreement you would have no *locus standi*?

Balfour Browne: That may be so, although it is not an absolute rule that a landowner who has notice to treat has not a *locus standi* against an extension of time bill. It is within the discretion of the Court, taking into account the special circumstances of the case. This is not the case of an ordinary landowner. We wish to use this land for public purposes.

Mr. CHANDOS-LEIGH: We cannot have regard to the purpose to which you would put the land if no extension of time were granted. Is there any case to which you can refer us in support of your contention?

Balfour Browne: I do not think there is any absolute authority. This is a peculiar case, three extensions of time having been applied for where the railway to be constructed is only four miles in extent. If we are to have no *locus standi* now the promoters will be able to again come for another extension of time bill, and we shall be then again precluded from being heard, and yet during the whole of this time we shall be unable to use our land.

Mr. HEALY: Does not the notice to treat give you certain rights against the promoters?

Balfour Browne: I do not see how. It has been decided that a notice to treat does not constitute a contract-at-law.

Mr. CHANDOS-LEIGH: In the *Regents Canal, City and Docks Bill*, 1885 (Rickards & Michael, 59), it was held that, as the bill *prima facie* altered the conditions of an agreement, it was not necessary to prove that the petitioners were prejudiced by such alteration, and they were entitled to be heard.

Balfour Browne: That is my argument. This extension bill alters the agreement we have with the promoters by making the time four years instead of two years.

The CHAIRMAN: There is a later case relating to the *Regents Canal, City and Docks Railway* undertaking, decided in 1887 (Rickards & Michael, 187), in which the *locus standi* was disallowed.

Baggallay (for promoters): The question here is what is the status of the petitioners according to the practice of this Court. It was stated most clearly in the *Milford Docks Junction Railway Bill*, 1884 (3 Clifford and Rickards, 441). The Chairman asked whether the petitioner was an owner of land required for the purposes of the work, who had received

a notice to treat, and the counsel for the petitioner said: "No, in that case we should not have been entitled to a *locus standi*. The Railways Clauses Act, 1863, provides (sect. 20) that when the question of compensation to a landowner comes to be decided, the arbitrator takes into consideration not only the value of the land at the time the notice to treat was served, but any damage the land may have suffered by reason of delay in the construction of the works, so that a landowner in such a position would be protected against the consequences of delay." That section of the Railways Clauses Act, 1863, is incorporated in the bill. As a matter of fact the bill does not extend the time for the compulsory purchase of land, but only for the completion of works. That is the case, apart from the question of agreement. A case like the present is unusual, for here the landowner purchased the land with the notice to treat over it, and took the land subject to that reservation in 1890. Then in 1892 we came for an extension of time bill, and while before the House of Lords we came to the agreement with the petitioners, which has been referred to, and on which they base their claim to be heard. That agreement is entirely unaffected by the bill, and merely compels the company when they make railway No. 1 to make a bridge between the severed portions of the petitioners' property. With regard to the company's agreement not to object to the *locus standi* of the vendors of these lands against future bills in Parliament, the petitioners were not parties to it, and we do not object to the *locus standi* of those parties against the bill, because they are in fact owners of land in respect to which no notice to treat has been given. This bill does not relieve the company from any of the obligations contained in the agreement. There is no difference between this agreement and an ordinary protective clause inserted in a bill which is in its effect contingent upon the construction of works authorised by the bill.

Mr. HEALY: The petitioners contend that it is absolutely impossible for you to complete the works within the time.

Baggallay: Yes, but the land became ours when the notice to treat was given, and the petitioners are merely creditors of the company in respect of it, and can either force us to complete the purchase or can claim against us for damages for non-completion. If we had not given their predecessors notice to treat they would undoubtedly have had a *locus standi*, but as we have done so they are not entitled, according to the practice of this Court, to be heard.

The CHAIRMAN: The *locus standi* is disallowed, as there are no circumstances to take it out of the general rule that a landowner who has been served with a notice to treat is not entitled to be heard against an extension of time bill.

Locus Standi Disallowed.

Agents for Petitioners, *Robertson & Co.*

Agents for Bill, *Durnford & Co.*

EDINBURGH NORTH BRIDGE IMPROVEMENT BILL. [H. L.]

Petition of DONALD MACGREGOR AND OTHERS.

4th July, 1894.—(Before Mr. SHIRESS-WILL,
Q.C., M.P., Chairman, &c., &c.)

The bill authorised the Lord Provost, magistrates and council of the city of Edinburgh to acquire lands and construct works for widening, altering and improving North Bridge and North Bridge Street in that city, and for that purpose (clause 8) to enter into agreements with the North British railway company, and clause 12 of the bill confirmed an agreement contained in the second schedule to the bill between the magistrates and council and the railway company, relating to the construction of the works authorised by the bill, and providing for a contribution towards the costs thereof by the railway company. By article 3 of the agreement the magistrates and council consented, for any interest they might have, to the company increasing the height of their station and buildings east of North Bridge to a maximum height of forty-two feet above the existing level of the rails, and article 4 provided that the company should acquire, so far as not already done, the whole of the properties on the south side of Princes Street between the Waverley steps and North Bridge Street, and extending southwards to a line in continuation of the line of the south wall of the General Post Office building, and should, as soon as practicable after Whit Sunday, 1895, take down the present buildings thereon and rebuild them complete within seven years from the date of the confirmation of the agreement by Parliament. The re-building thus provided for was to be carried out by the railway company subject to a number of conditions and restrictions which prescribed the position of the front walls of the houses to be erected on

the south side of Princes Street, the height of new buildings, which was not to exceed 95 feet from the roadway in Princes Street, and other matters as to the size and external design of the buildings, the plans for which were to be approved by the magistrates and council. The petitioners were a number of ratepayers and of feuars on the north side of Princes Street, and streets opening thereon, who held feu charters, originally granted by the corporation of Edinburgh, containing restrictions and covenants against the erection of buildings on the south side of Princes Street; and they claimed to be heard against the provisions of the bill which, on the ground that the agreement confirmed by it between the magistrates and council and the railway company, empowered the latter to violate the covenants and restrictions contained in the feus of the petitioners. The petitioners referred to two local statutes (7 & 8 Geo. IV., c. 76, and 1 & 2 Will. IV., c. 45) to show the nature of the restrictions as to building on the south side of Princes Street; and laid emphasis on the fact that the agreement scheduled to the bill, to which they objected, was also scheduled to and confirmed by an omnibus bill introduced into Parliament during the present session by the North British railway company, against which bill their *locus standi* had been conceded. The petitioners also relied on article 16 of the agreement scheduled to the bill, which specially recognised and preserved "provisions, prohibitions, limitations, servitudes, and restrictions contained in any prior statute," as recognising the existence of their rights. *Contra*, the promoters contended that the bill did not do more than enable the company to carry out, with the co-operation of the magistrates and council, powers for building on the south side of Princes Street already conferred upon them by the North British Railway (Waverley Station, &c.) Act, 1891, and that the agreement scheduled to the bill was a matter affecting only themselves and the company who were the parties to it.

The Court, however, held that the petitioners were entitled to be heard against clause 8, agreements with North British railway company, clause 12 (confirming agreement contained in the second schedule), and the second schedule of the bill.

Pembroke Stephens, Q.C., appeared for the petitioners; *Pember*, Q.C., for the promoters.

[The case turned upon the construction of Acts of Parliament, the agreement contained in the second schedule of the bill, and the effect of the Edinburgh Municipal and Police Acts,

1798 to 1893, and was of no value as a precedent.]

Agents for Petitioners, *Martin & Leslie*.

Agent for the Bill, *Beveridge*.

GREAT WESTERN AND MIDLAND RAILWAY COMPANIES BILL. [H. L.]

Petition of THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

26th July, 1894.—(*Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Mr. PARKER SMITH, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.*)

Railways—Amalgamation—Joint Vesting of Local Line in through Railway Companies—Absorption of Neutral Gathering Ground of Traffic—Competition and Diversion of Traffic.

The bill vested in the Great Western and the Midland railway companies the undertaking of the Severn and Wye and Severn Bridge railway company (in the bill called "the Severn and Wye company"). The Severn and Wye railway consisted of a railway 37 miles in length, carried over the Severn by a bridge, extending from Berkeley-road station close to Sharpness, where it joined the Midland railway, to Lydbrook junction, where it formed a junction with the Great Western railway. The petitioners' railway did not form a junction at any point with the Severn and Wye railway, the nearest points on the petitioners' system being Hereford and Birmingham, but they alleged that they received a considerable amount of mineral traffic from the Great Western and Midland railways, which arose upon the Severn and Wye railway and was consigned to Liverpool and places on the petitioners' railway in South Staffordshire. They alleged that the effect of the bill would be to enable the promoting companies to consign this traffic exclusively by their own railways to distant places such as Birkenhead, whence it could be carried by barge to Liverpool, instead of handing it over at intermediate places to the petitioners to be forwarded over their

own (the London and North-Western) railway system; and they complained that the bill would convert the Severn and Wye railway, which was at present a neutral gathering ground for themselves in common with the two promoting companies, into a feeder for the railways of the promoting companies only.

On behalf of the promoters it was contended that the bill created no new competition for the traffic in question; that it would be still open to traders on the Severn and Wye railway to consign traffic by the London and North-Western route to places not directly served by the promoting companies; and that no substantial injury would be caused to the petitioners by the vesting of the Severn and Wye railway in the promoters:

Held, however, that the petitioners were entitled to be heard against the amalgamation proposed by the bill.

The *locus standi* of the petitioners was objected to on the following grounds: (1) it is not alleged in the petition nor is it the fact that any lands or property of the petitioners will be taken or interfered with under the powers of the bill; (2) the promoters deny that the effect of the bill would be as suggested in paragraphs 5 and 6 of the petition, to close wholly or partially to traffic any one or more of the routes now open as competitive routes, or to divert traffic from the petitioners' railway and so deprive the public of the advantages of the petitioners' system of railways, but, even were it otherwise, the petitioners would not, on these grounds or any of them, be entitled according to the practice of Parliament to be heard against the bill; (3) the statements contained in the petition as to competitive traffic are too vague to entitle the petitioners, according to the practice of Parliament, to be heard against the bill, and even were it otherwise the effect of the bill at most will be to improve the existing competition between the petitioners and the promoters referred to in the petition, and the improvement of an existing competition does not, according to the practice of Parliament, entitle the petitioners to be heard against the bill; (4) the petitioners have no interests in or rights over the undertaking proposed to be transferred to the promoters, entitling them to be heard against the transfer; (5) the petition discloses no ground upon which, according to

the practice of Parliament, the petitioners are entitled to be heard against the bill or to ask for any powers or facilities over the Severn and Wye and Severn Bridge railway as suggested in paragraph 6 of the petition.

Little, Q.C. (for petitioners): This is a bill to vest jointly in the Great Western and Midland railway companies the undertaking of the Severn and Wye and Severn Bridge railway company, the railway and bridge undertakings of which company were amalgamated in 1879. The Severn and Wye and Severn Bridge railway consists of a railway and a bridge over the river Severn, extending from Sharpness to Lydbrook junction, and being about 37 miles in length. It is true that this railway is at present encircled by the lines of the Great Western and Midland railways, but hitherto there has been open competition for traffic from it to distant places reached by means of the Great Western, Midland, and London and North-Western railways. The petitioners have now, by means of through booking facilities and other arrangements, considerable traffic passing between their railway and the Severn and Wye and Severn Bridge railway, but if this bill passes, the promoters will endeavour to keep this traffic so far as they can do so on their own railways. The petitioners' nearest point to the Severn and Wye railway is Hereford, which is 17 miles distant, and another important point is Birmingham, which is however a long way off. At present a considerable traffic for Liverpool from the Severn and Wye goes by the Midland railway to Birmingham, and then goes by the London and North-Western railway upwards of 90 miles to Liverpool, but if this bill was passed, this traffic would be got hold of by the Great Western, who would carry it from Hereford by the joint line of the London and North-Western and the Great Western, to Shrewsbury, and from there to Chester on their own line, thence to Birkenhead by their joint line, and then by barge to Liverpool. That would be a very material divergence of this traffic. There is also a large traffic in pig-iron sent from the Severn and Wye railway to South Staffordshire. At present this is sent from the Severn and Wye railway, by Birmingham, to Ettingshall-road, on the London and North-Western railway, but if this bill passed, the Great Western would carry this traffic to Belston station on their own line, which is close to Ettingshall-road, and the Midland railway could also carry it to their Great Bridge basin on the Birmingham canal, and thence by barge take it to Ettingshall-road. There is also a considerable amount of traffic in iron ore from

the Forest of Dean, which is served by the Severn and Wye railway, to the Midlands, and this now to a large extent is sent from the Severn and Wye railway to Wednesbury on the London and North-Western railway by Birmingham, but if this bill passed, the Great Western would carry this traffic by their own railway throughout to their station at Wednesbury, and the Midland railway could also carry this traffic by Walsall junction to Wednesbury. Besides these instances there are others in which, if this bill passed, we should lose the share we now have in this traffic, and the public will lose the advantage they now possess of having competing routes by which they can send their goods. Where an amalgamation is proposed by a bill, it is the settled practice to allow every person who has an interest which he reasonably desires to have protected, to be heard against the bill: *Midland, and London and North-Western Railway Companies Bill*, 1869 (1 Clifford & Stephens, 83); *London and North-Western Railway (New Works, etc.) Bill*, 1867 (ib. 99); *Midland, and Glasgow, and South-Western Railway Companies Bill*, 1867 (ib. 100). In the *Great Western and Bristol and Exeter Railway Companies Bill*, 1876, an unreported case in which the Great Western railway were seeking to amalgamate with the Bristol and Exeter railway, the present petitioners were allowed a *locus standi*, notwithstanding the fact that Birmingham was the nearest point to which they approached to Bristol. There was the case of the *London and South-Western, Midland, and Somerset and Dorset Railway Bill*, 1876 (1 Clifford & Rickards, 242), it is true, decided by the Court on the same day, in which the present petitioners were not allowed a *locus standi*, and there must therefore have been a very considerable distinction found by the Court between the two cases.

The CHAIRMAN: The principle stated in the argument for the petitioners in that case seems to me to be unexceptionable, and to state the practice of the Court; but it may be that the reason of the decision in that case was that the Court were convinced that there could be no diversion of traffic.

Little: Yes. The principle as to *locus standi* in the case of railway amalgamation bills laid down in May's *Parliamentary Practice*, 10th edition, page 743, is that "the general ground upon which petitioners are admitted to oppose amalgamation bills is that the amalgamation itself will injuriously affect them." There is also the case of the *Metropolitan Railway Bill*, 1875, on the petition of the *London and North-Western Railway Company* (1 Clifford & Rickards, 173), where the company were asking

for powers to make arrangements for the conveyance of traffic over eight railways belonging to different companies, and the present petitioners complained that the bill would have the effect of welding separate railway links into one continuous chain, and alleged that these railways would serve the same extreme points as their own continuous system, and there the Court held "that the bill would confer powers differing materially from those possessed by the respective companies separately, and would place those companies in new relations to the petitioners, diverting their traffic to a new route, and entitling them therefore to a *locus standi*." The principle that competition gives a right to a *locus standi* applies to the present case, though the facts may differ. Here the promoters are changing the character and condition of the competition for through traffic arising on the Severn and Wye railway. In the *South-Eastern and London, Brighton, and South Coast Railway Companies Bill*, 1868 (1 Clifford & Stephens, 103), the present petitioners, the Great Western and the London and South-Western railway companies, were all allowed a *locus standi* to oppose the amalgamation. I admit that a mere theoretical idea that traffic will be diverted owing to the proposed amalgamation is not enough to give the right to a *locus standi*, but in the present case we have traffic amounting to thousands of tons coming from this particular district, which at present goes over our route, and which we can show beyond all reasonable doubt will be diverted under the new condition of things proposed by this bill, and we therefore claim a *locus standi* against the bill.

Pope, Q.C. (for promoters): The general principle upon which a *locus standi* is allowed in all bills, and not merely in amalgamation bills, is that the petitioners should show some substantial injury likely to arise from the bill. The line proposed to be acquired jointly by the two companies is surrounded at all points by the Great Western and Midland railways, and no traffic can leave the Severn and Wye railway without getting upon the Great Western railway, unless it passes over the Severn bridge and goes through Sharpness the other way. Therefore the Great Western can control the unconsigned traffic under the existing circumstances. The trader controls the traffic, and the Severn and Wye company does not consign traffic.

The CHAIRMAN: What interest would the Severn and Wye company have to consign traffic by one route rather than another?

Pope: The Severn and Wye company have no interest except to get the proportion of the

rate, and, if the traffic is consigned by the traders, the proposed amalgamation cannot make any difference as to the traffic. Where this Court has allowed a *locus* against amalgamation bills, it has been where there has been a claim that previously neutral territory was about to be appropriated by two rival companies. The question in every amalgamation case is, have the petitioners, in the traffic which they represent, a substantial interest, and is the injury likely to be inflicted upon them by the amalgamation such in regard to that traffic as to entitle them to a *locus standi*. The case which has been cited of the *London and South-Western, Midland, and Somerset and Dorset Railway Bill*, 1876 (1 Clifford & Rickards, 242), seems to me exactly analogous to the present case. In that case there was a collecting ground, from which, being neutral, traffic might be sent either by the petitioners' route or by another, and the *locus standi* was disallowed, and from that time to the present the decisions have been consistent with that decision, and not with the decision which was given on the same day in the unreported case of *The Great Western and Bristol and Exeter Railway Companies Bill*, 1876, which has been referred to in argument. In *The London and North-Western and Whitehaven, Cleator and Egremont Railway Companies Bill*, 1877 (2 Clifford & Rickards, 36), the Solway junction railway company petitioned against the proposed amalgamation, alleging that their interests as carriers of traffic from the district common to themselves and the promoters would materially suffer by the monopoly which would be created by the bill, and that, though their line did not join the Whitehaven, Cleator and Egremont railway, they had, by agreement with a third railway company, facilities for the traffic they received being passed on, and that the effect of the proposed amalgamation would be to deprive them of the benefit of that agreement. The Court however held that the injury apprehended by the petitioners was too remote to entitle them to a *locus standi*. The cases of the *Llynvi and Ogmogre, and Cardiff and Ogmogre Valley Railway Companies Bill*, 1876 (1 Clifford & Rickards, 238); the *Great Western and Monmouthshire Railway and Canal Companies Bill*, 1880 (2 Clifford & Rickards, 244); and the *Great Western and Cornwall Railway Companies Bill*, 1889 (Rickards & Michael, 255), were of the same kind, and the *locus* was disallowed in both cases. These cases all show that there must be a substantial alteration of the status of the petitioner in respect of the subject-matter of the bill to give the right to a *locus standi* against amalgamation bills. In

this case there will be no substantial alteration in the *status* of the petitioners. The consignors will send their traffic as now, and the unconsigned traffic will be dealt with as it now is, and the Severn and Wye railway company will after amalgamation have no greater interest to divert it from the petitioners than now.

Littler : I dispute that as a matter of fact. The Severn and Wye railway now control the traffic, and they control it in our favour, for they take it by the route by which they get the longest lead and the largest share of the rate, and that in many cases is by our route.

Mr. CHANDOS-LEIGH : If unconsigned traffic arising on the Severn and Wye railway at the present time has to go to Liverpool, might not it be consigned by the company itself to go by the London and North-Western by Shrewsbury and Crewe?

Pope : No ; they hand it over to the Midland, and it goes by the Midland route if it is for Liverpool.

Littler : I am instructed that is not so, and unless the contrary is proved it must be assumed that we are right in what we allege in our petition.

Pope : If there is an issue of fact we must call witnesses.

The CHAIRMAN : I think if the evidence is available the Court would like to hear it.

[*J. S. Beale*, solicitor to the Midland railway company, was then called and stated that the proposed amalgamation would not make any difference with regard to the unconsigned traffic for Liverpool or for South Staffordshire, as the Great Western and Midland companies, after receiving it from the Severn and Wye railway, at the present time kept it on their own railways as far as those railways would carry it, and only handed it over to the petitioners' traffic for places beyond those railways, which the Midland and Great Western companies could not carry for themselves independently of the petitioners.]

Pope : The petitioners are seeking to oppose this bill in order that they may get what, if it is reasonable, they can now obtain from the Railway Commissioners, viz., through rates and through facilities. I submit that the petitioners have not shown that their interests will be interfered with to such a substantial degree as to entitle them to a *locus standi*.

The CHAIRMAN : The *Locus Standi* is Allowed.

Agent for Petitioners, *C. H. Mason*.

Agents for Bill, *Sherwood & Co.*

LANCASHIRE AND YORKSHIRE RAILWAY BILL.

Petition of (1) THE CORPORATION OF SALFORD.

26th April, 1894.—(Before Mr. SHIRES WILL, Q.C., M.P., Chairman; Mr. ROUNDELL, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Railway—Extension of Time for Construction and Partial Abandonment—Municipal Corporation—Injury to Borough by postponement of Benefits anticipated from Railway—S. O. 134 [Municipal Authorities and Inhabitants of Towns.]

Clause 15 of the bill extended the time limited for the completion of a railway (No. 1) authorised by the Lancashire and Yorkshire Railway Act, 1890, and clause 28 provided for the abandonment of a branch railway (No. 2) authorised by the same Act. Both these railways were within the borough of Salford, and had been designed for the purpose of giving access to the Salford docks of the Manchester Ship canal. The canal was in course of construction in 1890, and had since been completed and opened for traffic. The corporation of Salford claimed to be heard against the proposed extension of time and abandonment on the ground that the borough would be injuriously affected by the postponement and partial loss of the benefits they had anticipated from the construction of the railways in question in accordance with the provisions of the Lancashire and Yorkshire Railway Act, 1890, and they claimed a *locus standi* under the discretion vested in the Court in such cases by S. O. 134 :

Held, that the petitioners were entitled to be heard.

The *locus standi* of the petitioners was objected to on the following grounds : (1) the petition does not allege nor is it the fact that any lands or property of the petitioners can be taken under the powers of the bill ; (2) the promoters deny that the petition against the bill for the Lancashire and Yorkshire Railway Act, 1890, presented by the Corporation of Salford, the present petitioners, was withdrawn in consideration of the public interests involved in the construction of the railways in the petition referred to. Their opposition was withdrawn in consideration of various pro-

tective works contained in thirty-nine sub-sects. to sect. 15 of the said Act; (3) the petitioners are not entitled to be heard against the abandonment of railway No. 2 in the petition referred to on the ground that it would have afforded benefit to the inhabitants of the borough of Salford, of which the petitioners are the municipal authority, or on the ground that the said inhabitants will be deprived by such abandonment of the benefit they would have derived from such railway; (4) the petition does not allege that the extension of time sought by the bill for the completion of railway No. 1 in the petition mentioned will injuriously affect the petitioners or the said borough; (5) the extension of time sought for the completion of railway No. 1 in the petition referred to does not so injuriously affect the petitioners or the said borough as to entitle the petitioners, according to the practice of Parliament, to be heard against the bill; (6) the petition does not allege or disclose any matter which injuriously affects the rights and interests of the said borough so as to entitle the petitioners, according to the practice of Parliament, to be heard against the bill; (7) the petition does not allege or disclose any right or interest or any ground of objection which, according to the practice of Parliament, entitles the petitioners to be heard against the bill.

Bidder, Q.C. (for petitioners): The provisions of the bill to which the corporation of Salford take special objection are those for extending the time for the construction of one railway and the abandonment of another, both of which railways are within the limits of the borough of Salford. The clauses of the bill dealing with this are clauses 15 and 28, and they are as follows: Clause 15 (sub-sect. 1), "The time limited by the Lancashire and Yorkshire Railway Act, 1890, for the completion of railway (No. 1) by that Act authorised is hereby extended until the 4th day of August, one thousand eight hundred and ninety-eight, and sect. 7 of that Act shall be read and construed accordingly;" and clause 28, "The company may abandon the construction of the branch railway at Salford (railway No. 2) authorised by the Lancashire and Yorkshire Railway Act, 1890." Both these railways were designed for the purpose of giving access to the Salford docks of the Manchester Ship canal, and it is obvious that the Manchester Ship canal having been opened it is of great importance to us that it should have every opportunity of being developed. We have made great sacrifices in order to help forward the completion of the canal and the docks, and on the faith of the railway connec-

tions that were to be made with them, and it is a breach of faith with us and with the public for the promoters to be allowed to postpone part of the connections and to abandon the rest. As between postponement and abandonment the principle is the same, because abandonment is simply effectual postponement. Therefore, as regards both the railways our right to be heard is, in principle, the same. Moreover, all the land required for these lines has been purchased and there is therefore no reason whatever for postponement. On these points our petition contains the following allegations: paragraph (8) "Your petitioners submit that such railway, which is only 1 mile 4.45 chains in length and which presents no special features of difficulty, could easily be completed within the time already authorized by Parliament, that such railway will be of benefit to the public and to the county borough, and the company can show no just cause or reason for seeking a further extension of time for its construction." Paragraph (9) "Your petitioners also object to the abandonment of railway No. 2, and the inhabitants of the borough being deprived of the benefit which they would derive therefrom. Your petitioners submit that the company being under penalty to construct it should not be relieved of their obligations." We also allege in paragraph 6 "Your petitioners, in the interests of their county borough, presented a petition against the bill for the said Act of 1890 on various grounds, but in consideration of the public interests involved in the construction of the said railways, amongst other things, they withdrew their opposition on a clause for their protection being inserted." The decisions of the Court show that a municipal body has a right to be heard in such cases as representing the public interests. I ask to be heard under the discretionary S. O. 134. We allege that we are injuriously affected, and it is for the Court to say whether, under the circumstances, we have such an interest in the matter as in your discretion entitles us to be heard. Last year we had agreed to subscribe £1,000,000 towards the expenses of the Ship canal company, and we were asking Parliament to authorise this, when the Manchester corporation said they would find the whole money required, and they were allowed by Parliament to do so, but our action in asking to subscribe £1,000,000 shows clearly our *bonâ fide* interest in the matter. Besides this we have spent and are spending a very large sum in connection with the alteration of streets so as to give connections with the docks on the ship canal. We had every right to believe that the promoters, having obtained

these powers, intended to carry them out, and in this belief we have spent large sums of money on improvements. In the case of the *Great Eastern Railway Bill*, 1872, which was a bill for extension of time, the *locus standi* of both the corporation of London and the Commissioners of Sewers (2 Clifford and Stephens, 231) was allowed for similar reasons to those for which we claim a *locus* in this case, and in the case of the *Metropolitan Railway Bill*, 1872 (ib., p. 238) the *locus standi* of the Metropolitan Board of Works was conceded, and in the case of the *Forfar and Brechin Railway Abandonment Bill*, 1891 (1 Rickards and Saunders, 104), the corporation of Brechin and others were allowed a *locus standi*.

Pope, Q.C. (for promoters): The petitioners base their appeal to the discretion of the Court upon their interest in the Manchester Ship canal. There is nothing in the petition to show that this extension of time or abandonment bill would be injurious to the canal. If it were so the Manchester Ship canal are the proper parties to be heard. The petitioners have stated in argument that postponing the construction of railway No. 1 and the abandonment of railway No. 2 will injure the ship canal, but they do not allege this in their petition, and moreover the fact is that the construction of railway No. 2 would injure the canal, as they require this land for a road entrance. The question as to the extension of time may be different, but the real question is whether an allegation by a corporation that their borough may be injured by the postponement of the construction of a line and depriving them of the benefits anticipated, is enough to found a *locus standi* upon. The object of the postponement is to comply with the law requiring us to provide labourers' dwellings in substitution for those we take, and until we do so we cannot obtain possession of and remove the existing dwellings. We are at present doing this, but the construction of substituted dwellings will take a longer time than will enable us to complete the works, and therefore we are bound to ask for an extension of time. I submit that under these circumstances the Court will not exercise their discretion under S. O. 134 in favour of the petitioners.

The CHAIRMAN: We are of opinion that the *locus standi* must be allowed against both the extension of time and the abandonment.

Locus Standi Disallowed except as against Clauses 15 and 28 and so much of the preamble as relates thereto.

Agents for Petitioners, *Sherwood & Co.*

Petition of (2) J. B. HODGKINSON AND J. LINDLEY.

Alleged Alteration of Definition of Harbour Limits in Former Act—Property of Landowners brought within Harbour Limits—Doubtful Construction of Act—Practice.

Clause 37 of the bill repealed a section of a local Act, passed in 1839, defining the limits of the harbour of Wyre (now called Fleetwood), and defined anew the limits of the harbour. The petitioners were the owners of a part of the foreshore adjoining the harbour, and contended that this part of the foreshore, which was now outside the limits of the harbour, would be brought within it by clause 37 of the bill. Upon a discussion taking place as to whether the meaning of clause 37 warranted this contention on behalf of the petitioners, the Court held that the matter being open to doubt, the petitioners were entitled to be heard against the clause, in accordance with the practice of the Court in such cases.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the petition does not allege, nor is it the fact, that any lands or property of the petitioners can be taken under the powers of the bill; (2) no maps or plans of the proposed limits of the harbour of Fleetwood are by the Standing Orders or rules of Parliament required, nor is any notice of those limits required to be given except the notice which was given in the *London Gazette* and county papers, and that notice contained an exact description of those limits; (3) the existing limits of the harbour are not altered so as in any way to include any portion of the petitioners' property; (4) if the Garstang and Knott End railway is excluded from access to the said harbour it is by reason of existing legislation, which is not altered by the bill, and paragraph 8 of the petition, if intended as a complaint, is a complaint of past legislation or of an existing state of things, and does not constitute a ground entitling the petitioners to be heard against the bill; (5) the promoters deny that they and the London and North-Western railway company have at present no right to recover tolls on the eastern side of Fleetwood harbour, or that sect. 37 of the bill confers that right for the first time as

alleged in paragraph 9 of the petition; (6) the petition does not allege or disclose any right or interest or any ground of objection which, according to the practice of Parliament, entitles the petitioners to be heard against the bill.

J. D. Fitzgerald (for petitioners): The petitioners are the owners of the foreshore on the eastern and northern sides of the river Wyre, and they believe, that by the proposed alteration of the limits of the Fleetwood harbour, their foreshore will be included within the limits of the harbour, and they therefore ask to be heard against the bill. We allege that the promoters, by clause 37 of the bill, alter the line from the centre of the stream to high water mark. We make the following allegations in our petition:—Paragraph 3. "Sect. 37 of the bill proposes to repeal sect. 20 of an Act passed in the second and third years of her present Majesty (1839), intituled an Act to amend the several Acts relating to the Preston and Wyre railway and harbour company and the Preston and Wyre dock company, and to consolidate the said companies," which Act defined the limits of the said harbour as follows:—"That the said harbour shall, for the purposes of the recited Act, be deemed and taken to extend from Bourn Naze aforesaid to two miles north of Rossall point aforesaid on the western side of the said river Wyre, and from the extreme south-west point of a certain head of land called Stalmine head, along the high water line on the western and northern sides of the said head of land to and across the northern end of a certain way or swashway (opening to the river on the north side of the said head of land) to the main, and from thence to three miles north of Knott End on the eastern side of the said river Wyre," and to substitute other limits which are defined so far as the eastern side of the harbour is concerned, as follows:—"And to extend on the easterly side of the said rivers from the south-west point of a certain head of land called Stalmine head along the high water line to Knott End, and thence to a point three miles from Knott End, measured in a north-westerly direction along a line, forming an angle of $26^{\circ} 56'$, with a line pointing due north from Knott End." Paragraph 4. "Sect. 37 of the bill further provides that the substituted limits shall be deemed to be the limits of the harbour for all purposes, including the levying and recovering of tolls, rates and charges." Paragraph 5. "Your petitioners are the owners in fee simple of two equal undivided third parts of the foreshore on the eastern or Knott End side of the river Wyre and on the northern side by Morecambe bay, under a grant from Her Majesty the

Queen, in right of Her Duchy of Lancaster, dated the 6th December, 1892, as well as of a valuable building estate of about 86 acres in extent, adjoining the said foreshore, and known as the Quail Holme estate."

The CHAIRMAN: You have to satisfy us that by the proposed alteration of the definition of the limits of the harbour your foreshore is going to be brought for the first time within the limits of the harbour.

Fitzgerald: There is nothing said about high or low water in the definition in the Act of 1839. The question is whether the words used necessarily imply the high water line. The new definition proposes to make that certain which at present is doubtful, and we are therefore entitled to a *locus standi*, in order that we may see that our foreshore is not included.

Pope, Q.C. (for promoters): I read the words in the section to be identical in effect with the old powers.

The CHAIRMAN: No, in the definition in the Act of 1839 the line follows the swashway.

Pope: That makes no difference; it does not affect the limits. As the definition stands in the bill there is no doubt that the line following the high water mark takes in the foreshore, and the question is whether the definition in the old Act followed the same line. The words there used are "to the main and from thence to three miles north of the Knott End on the eastern side of the said river Wyre." The question is what "the main" means. We say "main" is the main bed of the river, whereas the swashway joins the main at a certain point. If it could be shown that by the words of the section we brought the foreshore belonging to the petitioners within our limits, I should at once concede their *locus standi*, but the bill clearly does not do so.

The CHAIRMAN: We think that as there is a doubt in the matter the *locus standi* must be allowed.

Locus Standi Disallowed, except against clause 37, and so much of the preamble as relates thereto.

Agent for Petitioners, *L. Kirkman*.

Agents for Bill, *Dyson & Co.*

LONDON, CHATHAM AND DOVER
RAILWAY BILL.

Petition of THE CORPORATION OF FOLKESTONE.

12th April, 1894.—(Before Mr. SHIRES WILL,
Q.C., M.P., Chairman, &c., &c.)

Clause 10 of the bill repealed sect. 31 of the South Eastern Railway Act, 1893, which had enlarged the powers of the joint committee of the South Eastern and the London, Chatham and Dover railway companies appointed to deal with traffic included within the purview of an agreement between the two companies known as the Continental Agreement, and re-enacted in a different form the provisions of sect. 31 of the Act of 1893, but required that in future the approval of a majority of three-fourths of the shareholders of the respective companies, present at a meeting convened for the purpose, should be obtained to modifications of the Continental Agreement by the joint committee of the two companies. The corporation of Folkestone asked to be heard against clause 10 of the bill on the ground that it would enable the two companies to enter into arrangements whereby continental traffic might be diverted from Folkestone and sent to the Continent *via* Dover instead of Folkestone, whereby the interests of the borough would be injuriously affected. It appeared, however, upon a comparison of clause 10 of the bill with sect. 31 of the Act of 1893 that, with the exception of the provision in the former that the consent of shareholders should be obtained to any alteration of the Continental Agreement between the two companies, clause 10 of the bill was, in effect, identical with sect. 31 of the previous Act, and that the above provisions in clause 10 of the bill as to the consent of shareholders merely restored to the shareholders powers temporarily given to the joint committee by the Act of 1893, and that such a provision was in favour of a continuance of the existing arrangements between the two companies as to continental traffic and a limitation of the power of the joint committee to revise these arrangements, and the Court, after a careful comparison of clause 10 and sect. 31 of the previous Act, disallowed the *locus standi* of the petitioners without calling upon the promoters' counsel to reply.

[The arguments turned solely upon a comparison of the clause and section in question and the verbal meaning to be assigned to them; and the case was of no value as a precedent.]

Balfour Browne, Q.C., appeared for the petitioners; *Pope*, Q.C., for the bill.

Agents for Petitioners, *Collyer-Bristow, Russell, Hill & Co.*

Agents for Bill, *Martin and Leslie.*

MANCHESTER, SHEFFIELD AND
LINCOLNSHIRE RAILWAY BILL.Petition of THE VESTRY OF THE PARISH OF ST.
MARYLEBONE.

26th April, 1894.—(Before Mr. SHIRES WILL,
Q.C., M.P., Chairman; Mr. ROUNDELL, M.P.;
and The Hon. E. CHANDOS-LEIGH, Q.C.)

Railway Company—Power to acquire Lands—Local Authority—Demolition of Houses—Loss of Rates—Quantum of Injury—Lands Clauses Consolidation Act, 1845, s. 133 [Land Tax and Poor Rate to be made good]—Claim of Petitioners to extend provisions of Section to General Local Rates not leviable at time of passing of Lands Clauses Act—S. O. 134 [Municipal Authorities and Inhabitants of Towns].

Clause 13 of the bill empowered the promoters "to enter upon, take, use, and appropriate for the purposes of their undertaking" certain lands and buildings, comprising an area of about four acres, in the parish of St. Marylebone. The vestry of the parish petitioned against the bill on the ground that the effect of clause 13 would be that the promoters would destroy house property which at present was rateable for parochial purposes, and thereby diminish the rateable value of the parish and throw an additional burden on the ratepayers, and the petitioners claimed to be heard to obtain the insertion of a provision in the bill to extend the provisions of section 133 of the Lands Clauses Consolidation Act, 1845 (which Act was incorporated with the bill), so as to compel the promoters to make good any deficiency in the general parochial rates levied by the vestry, as well as in the land tax and poor rate as provided by the said sect. 133. The petitioners referred to a section in the Manchester Sheffield and Lincolnshire Railway (Extension to London) Act, 1893, which extended

section 133 of the Lands Clauses Consolidation Act, 1845, in the manner asked for by them, and contended that the reason that section did not extend to general local rates was because such rates were not leviable at the time of the passing of the Act of 1845.

Contra, the promoters contended that the object of the company in acquiring compulsory powers over the lands in question was to enable them to fulfil an obligation imposed upon them by section 71 of their Act of 1893, at the instance of the London County Council and the vestry, to erect labourers' dwellings in substitution for other dwellings demolished by the company for the purpose of railway works, and that therefore the acquisition of lands under clause 13 of the bill was not "for the purposes of their undertaking" but for the benefit of other people, and for this reason not within the principle of section 133 of the Lands Clauses Consolidation Act, 1845. This contention, they maintained, was borne out by the amended form of clause 13 in the filled-up bill, which expressly stated the purpose for which the lands to be acquired were taken, namely, for the erection of labourers' dwellings in accordance with section 71 of the company's Act of 1893. The promoters also relied upon the small rateable value of the property to be acquired by them under clause 13 in proportion to the rateable value of the parish as showing that no substantial injury would be inflicted on the petitioners' district:

Held, however, that in accordance with the practice of the Court, clause 13 must be considered, for purposes of *locus standi*, in the form in which it appeared in the deposited bill, and that the petitioners were entitled to be heard against it on the grounds advanced by them.

The *locus standi* of the petitioners was objected to on the following grounds: (1) clause 13 of the bill against which the petition is directed simply gives powers to take and hold lands for the purposes of the company's undertaking, which, when purchased, they will hold on the same terms as any ordinary purchaser of land, and any buildings which the

company may erect upon the lands described in the said clause 13 will be subject to the general law relating to the erection and rating of buildings. The rights and interests of the petitioners will be in no way affected by the proposed purchase of land any more than they are by any other purchase of lands and buildings in the parish; (2) the area of land described in clause 13 of the bill is not intersected by any roads, streets, or thoroughfares, and none of these will be affected by the powers sought by the bill, and they are not entitled to be heard to oppose the provisions of the bill for the purchase of the said lands; (3) the paragraphs of the petition, numbered 4 to 9 inclusive, the accuracy of which the promoters do not admit, are not such as to entitle the petitioners to be heard against the bill; (4) the petition does not disclose any facts or circumstances which, according to the practice of Parliament, entitle the petitioners to be heard either against the preamble or the clauses of the bill.

J. D. Fitzgerald (for petitioners): The part of the bill which affects the vestry of Marylebone is clause 13, which is as follows:—"Subject to the provisions of this Act, the company, in addition to the other lands which they are by this Act authorised to acquire, may, from time to time, enter upon, take, use, and appropriate, for the purposes of their undertaking, all or any of the lands hereinafter mentioned, delineated on the deposited plans and described in the deposited books of reference (that is to say):—Certain lands and buildings, comprising an area of four acres or thereabouts, situate in the parish of St. Marylebone, in the county of London;" and then follows a description of the lands in question, with their boundaries. The petitioners oppose this clause on the ground that if this power is granted, sect. 133 of the Lands Clauses Consolidation Act, 1845, ought to be extended so as to include local and parochial rates, which answer in the metropolis to the general district rate provided for in other parts of the country by the Public Health Act, 1875. This question has not come before this Court before, but it has often come before Committees of Parliament. Last year the promoters introduced a bill for constructing new lines in London, and took powers to acquire about 70 acres of land in Marylebone. The present petitioners opposed the bill, which was passed by the title of the Manchester, Sheffield, and Lincolnshire (Extension to London, &c.) Act, 1893, but as a result sect. 48 was inserted in the bill, which is as follows: "So far as relates to all property acquired by the company in the parishes of Marylebone

and St. John's, Hampstead, sect. 133 of the Lands Clauses Consolidation Act, 1845, shall be read as if the words 'general district or other local rate' were included therein." The *locus standi* of the petitioners against the bill of 1893 was conceded on account of the interference by the bill with a road under their jurisdiction, and that is the reason why on other similar occasions this question has not been before the Court in the discussion of *locus standi*. The promoters are now asking for powers to acquire further land, and we are entitled to be heard before the Committee to say that the clause we obtained last year extending sect. 133 of the Lands Clauses Act so as to include the general district and local rates should be inserted in this bill. The general district rates were not included in sect. 133 of the Lands Clauses Act because at the time that Act was passed there were no district rates, and therefore the Act only included the rates then in existence, namely, the land tax and the poor rate. That a vestry suffers damage by lands being taken and kept untenanted for a considerable time was recognised by the legislature in 1845, as is clear from the fact that sect. 133 was inserted in the Lands Clauses Act. There was nothing equivalent to the general district rate until 1848, when the Public Health Act, 1848, came into existence, and the fact that the legislature recognised this as a grievance and inserted in a public Act a provision to protect the local authority against loss of rates entitles us to be heard, when there is a new rate which has become leviable since the Lands Clauses Act was passed.

The CHAIRMAN: Is there anything in your petition to bring you under S. O. 134 as to the injurious affecting of your district?

Fitzgerald: We allege in paragraph 7 of the petition as follows: "Your petitioners humbly submit that the effect of the powers already conferred on the company will be that a large extent of valuable property within their parish may be taken compulsorily or by agreement and destroyed, or may be damaged or left unoccupied; and that the extent and value of property assessable to parochial and sanitary rates within the parish of your petitioners will be thus diminished, and the parish and the ratepayers thereof will be prejudicially affected. The result of the powers now sought will be to aggravate and extend this hardship and injury in your petitioners' parish without any corresponding benefit in the public interest."

Worsley Taylor, Q.C. (for promoters): Local authorities have, no doubt, obtained a *locus standi* to deal with this matter of rates in some instances, but only where their streets were

interfered with, and that was the case in our bill of 1893. It is said that this is a *casus omissus*, because the general district rate did not exist at the date of the Lands Clauses Act, but sect. 133 provides: "That if the promoters of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax or liable to be assessed to the poor rate, they shall from time to time, until the works shall be completed, be liable to make good the deficiency in the several assessments for land tax and poor rate by reason of such lands having been taken or used for the purposes of the works." The legislature clearly intended therefore that section to apply when companies obtained power to acquire land for the purposes of certain works authorised by the bill for the benefit of the railway, and therefore in those cases a *locus standi* might be allowed. But that is very different to the present case. These works are imposed upon us by the County Council in concert with the vestry for the benefit of other people, for whom we are to erect workmen's dwellings in substitution of those we have demolished, and we are not within even the principle of sect. 133. The words in the original bill were "to enter upon, take, use, and appropriate for the purposes of their undertaking" certain lands, but this has been altered by the direction of the authorities of the House, and the following words are substituted: "May take, use, and appropriate for carrying into effect the obligations incumbent upon them in pursuance of sect. 71 of the Extension to London Act, 1893, the marginal note of which is 'Restriction on displacing persons of the labouring class.'" We cannot therefore use the lands for any purposes of our own, but we must use them for the benefit of the petitioners' parish. Moreover, the general rule in these cases is that local authorities can only be heard where substantial injury is shown, and that is not the case here. The total rateable value of the parish is £1,800,000, and the whole rateable value of this land is £2,200, of which land part of the value of £800 is ours already. We ask to have this land not to make railways upon, but simply for the purpose of building houses, and there is no alteration whatever in the *status* of the petitioners, as the present owners of the property could do precisely the same thing without an Act of Parliament.

The CHAIRMAN: We are of opinion that there is a *locus standi*, but we specially wish to guard ourselves against saying anything that might affect the merits of the matter.

Mr. CHANDOS-LEIGH: I would like to add this. The Court is always bound by the bill as originally deposited, and in the bill as deposited we find the words "for the purposes of their undertaking." Now the word undertaking might include works which might come within sect. 133 of the Lands Clauses Act. In the filled-up bill this is altered, and what the land is intended for is definitely pointed out. That makes a considerable difference in the position of things when the parties appear before the Committee, but not upon *locus standi*.

Locus Standi Disallowed except as against Clause 13 and so much of the preamble as relates thereto.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Martin & Leslie.

NORTH-EASTERN RAILWAY BILL.

Petition of THE CORPORATION OF WEST HARTLEPOOL.

19th April, 1894.—(*Before Mr. SHIRES WILL, Q.C., M.P., Chairman; Mr. PARKER SMITH, M.P.; Mr. ROUNDELL, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.*)

Railway—Bill for Alternative Line in lieu of Railway Promoted in Previous Session—Local Authority Opposing Bill as not imposing Obligation to Construct Railway—Block Line—Alleged Parliamentary Undertaking by Promoters in Previous Session to Construct Proposed Railway—Penalty Clause in Bill—Injurious Affecting of District—S. O. 134 [Municipal Authorities and Inhabitants of Towns.]

Clause 4 of the bill provided that the North-Eastern railway company might make certain short railways, including a railway, No. 4, commencing outside the borough of West Hartlepool by a junction with an existing railway of the promoters, and terminating by a junction with another of their railways, close to Seaham harbour. In the previous session of Parliament a bill had been promoted by some independent persons to construct a railway to afford communication between the same points and serve the same traffic as railway No. 4 of the bill. The bill of the previous session was rejected by the committee of Parliament, to whom it was referred, on the North-Eastern company, who opposed it on petition, undertaking to promote a bill

for a similar railway in the present session. The corporation of West Hartlepool, while admitting that railway No. 4 of the bill would serve the same traffic as that proposed by the bill of the previous session, opposed the bill on the ground that it imposed no obligation on the North-Eastern company to construct railway No. 4, and that such obligation ought to be imposed upon the company in order to give effect to the arrangement of the previous session. It appeared, however, that the petitioners were not parties to the alleged arrangement of the previous session, and did not even present a petition against the bill then before Parliament, and that clause 10 of the bill imposed the usual penalties upon the promoters in case of their failure to complete the authorised railway within the period prescribed by the bill:

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to on the following grounds: (1) the only provisions of the bill to which the petitioners object by their petition, are those relating to the construction of a railway in the bill and petition referred to as railway No. 4; (2) it is not alleged in the petition, nor is it the fact, that the said railway No. 4, or any part thereof, will be situate within the borough of West Hartlepool, or that any lands or property of the petitioners will or can be taken or interfered with under the powers contained in the bill; (3) the promoters deny that the borough of West Hartlepool or the inhabitants thereof will be injuriously affected by the bill, or that the bill in any way affects them so as to entitle the petitioners to be heard against the bill; (4) the petitioners are not entitled to be heard upon their petition for the purpose of asking Parliament to make the construction of the said railway, No. 4, compulsory on your petitioners, which would be contrary to the practice of Parliament; (5) the circumstances in connection with the *Durham Coast Railway Bill* of last session, referred to in paragraphs 7 and 8 of the petition, even if correctly stated (which the promoters do not admit), do not entitle the petitioners to be heard against the bill, and even if the petitioners had been parties to the understanding therein referred to, which the promoters do not admit, they would not on that account be entitled to be heard against the

bill by which the promoters are carrying out their part of such understanding; (6) the petitioners are not in any way affected by the provisions of clauses 10 and 11 of the bill, which are the usual clauses with respect to penalties for non-completion of the railways authorised by the bill inserted in pursuance of the Standing Orders of the House of Commons; (7) the petition discloses no grounds upon which, according to the practice of Parliament, the petitioners are entitled to be heard thereon against the bill.

Pembroke Stephens, Q.C. (for the petitioners): This is a bill to enable the North-Eastern railway company to construct a line, described in clause 4 as railway No. 4, similar to the Durham Coast railway, a bill for which was promoted last session by independent persons, but which the promoters successfully opposed, on the undertaking that they would this session themselves promote a bill answering the same objects. The petitioners are the corporation of West Hartlepool, and object to the purely permissive powers contained in the bill. We say that there is nothing in the bill to indicate that the inclusion therein of power to construct this line was the result of a parliamentary bargain entered into last session, and that the promoters should be placed under obligations to make this line after what took place last session. The town of West Hartlepool has now lost the independent line which would have been made, and as this is merely a permissive bill, the line now sought for may never be made, in which event the town will be most injuriously affected. We therefore want the words "may make," contained in clause 4 of the bill, altered to "shall make."

The CHAIRMAN: That is a very unusual ground for a *locus standi*.

Stephens: The promoters may not exercise the powers themselves, and they may prevent anybody else making the line by their having the power to make it, and so, to use a common phrase, merely treat the proposed railway as a "block line." The main line of the North-Eastern railway runs into West Hartlepool and the proposed line joins the main line two miles outside the borough, and therefore it is part of a line starting in the borough.

Mr. CHANDOS-LEIGH: Were the petitioners parties to the arrangement of last year?

Stephens: No; we did not petition; we arranged clauses with the Durham Coast railway company because we desired the communication to be made. We want now to be before the Committee on this bill to see that this line is made a real line and not used merely

to prevent another independent line being made.

The CHAIRMAN: Can you refer the Court to any authorities in your favour?

Stephens: I do not know of any. It is true that if the promoters do not make the proposed line within the time prescribed by the bill, then the penalty clause (clause 10 of the bill) comes into operation, but though penalty clauses might be a very important obligation upon weak promoters, they are absolutely of no consequence to the North-Eastern railway, assuming that they as a matter of policy and to prevent any one else from making this line elected to incur the penalty. The penalty clause, which is in the usual form, is a clear indication of the intention of Parliament that promoters should carry out these undertakings, and I contend that in this particular case these penalties are not sufficient.

Mr. CHANDOS-LEIGH: It is the only remedy which at present the general public have, and is in accordance with the established practice of Parliament, and you are asking us to go beyond it in this case.

Stephens: Penalty clauses are really for the protection of owners and occupiers on the proposed line of railway, who may be affected by the abandonment of it. There is nothing in the penalty clauses at all meeting the case of a corporation anxious that its district shall be properly dealt with, and we therefore ask to be heard under S. O. 134.

Bidder, Q.C. (for the promoters), was not called on.

The CHAIRMAN: We are satisfied that in this case no *locus standi* is made out.

Locus Standi Disallowed.

Agents for Petitioners, *Baker, Lees & Postlethwaite*.

Agents for Bill, *Sherwood & Co.*

PIER AND HARBOUR PROVISIONAL
ORDERS CONFIRMATION (No. 3) BILL.
(LOCH EFORT ORDER.)

Petition of (1) THE CLYDE STEAMSHIP OWNERS'
ASSOCIATION AND JOHN MCCALLUM & COMPANY;
AND (2) THE INVERNESS COUNTY COUNCIL.

21st June, 1894.—(Before Mr. SHIRESS WILL,
Q.C., M.P., Chairman; Mr. ROUNDELL, M.P.;
The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr.
BONHAM-CARTER.)

*Construction of Pier in Sea Loch—Shipowners and
Traders—County Council—S.O. 134B (County
Council alleged to be injuriously affected by
Bill)—Loch included within Harbour Limits
and Jurisdiction of Undertakers—Imposition of
Harbour and Pier Rates—Existing Free Pier
and Free Anchorage within Loch—Control of
Vessels approaching existing Pier and Anchoring
in Loch by Pier-Master—Claim to Limit
Locus to question of Rates, not construction of
Pier—Practice—Joint Petition of Steamship
Owners' Association and Individual Steamship
Owners—Claim of Association to represent
Trade Interests.*

The bill confirmed a Provisional Order of the Board of Trade for the construction, maintenance and regulation of a pier in Loch Efort, an arm of the sea in the island of North Uist, in the county of Inverness. The loch had hitherto been a free anchorage, and there was an existing pier free from tolls of any kind. The harbour limits, as defined by the order, within which the undertakers could control the navigation of vessels, and levy harbour rates and rates on goods landed or shipped within the harbour limits and at the proposed pier, included the whole width of the loch. A joint petition was presented against the bill by (1) the Clyde Steamship Owners' association and a firm of shipowners, who claimed to be heard on the ground that the Order authorised rates to be levied on all vessels which anchored or moored in the loch, whereas the loch had hitherto been a free anchorage; and the petitioners pointed out that it was often necessary for vessels going to the existing free pier to lie off it at anchor on

account of the lowness of the water. They further objected to the Order as subjecting vessels coming into the loch to the control of the undertakers and their pier-masters. Objection was taken by the undertakers to the *locus standi* of the petitioners, and especially to that of the Clyde Steamship Owners' association, on the ground (1) that they did not represent the shipping trade of Loch Efort; (2) that inasmuch as the Order was for the benefit of Loch Efort as a harbour and did not abolish the existing free pier, the levying of a rate on vessels anchoring within the harbour limits was not such a substantial injury as to entitle shipowners or traders to be heard; and it was further contended (3) that in any case the *locus standi* of the petitioners ought to be limited to the question of harbour rates, and that they were not entitled to be heard against the construction of the proposed pier and works:

Held, that, as regards (1) representation of shipping interests in Loch Efort, the objection to the *locus standi* of the Clyde Steamship Owners' association must be sustained on the authority of the decision in the *Glasgow and South-Western Railway (Steam Vessels) Bill*, 1891 (Rickards and Saunders, 115), but not as regards John McCallum & Co., who signed the petition as an individual firm of shipowners; (2) that the imposition for the first time of harbour and pier rates within the loch was a ground for the petitioners being heard; and (3) that their *locus standi* against the bill confirming the order should be general, and not confined to the question of rates.

A *locus standi* against the bill was also claimed by (2) the county council of Inverness-shire, on the same grounds, under S.O. 134B, and after the decision of the Court in the case of petitioners (1) was conceded by the agent for the undertakers.

The *locus standi* of the petitioners (1) was objected to on the following grounds: (1) the petitioners do not represent any trade which will be affected by the Provisional Order. The fact that these vessels come to Loch Efort does

not entitle them to be heard against the construction of a pier which they will be under no obligation to use; (2) the existing pier and rights (if any) of persons to use the same are not affected by the powers proposed to be conferred by the Provisional Order, and the petitioners are not entitled to be heard against the Provisional Order on that ground; (3) the powers sought by the Provisional Order do not affect any portion of Loch Efort in which the petitioners have any such interest as would entitle them to be heard against the Order, nor would the fact that vessels might now anchor within that part of the loch which will be within the limits of the Order entitle the petitioners to be heard against the Order; (4) the petitioners have no such interest in the rates proposed to be levied under the Order as, according to the practice of Parliament, entitles them to be heard against the Order; (5) the Order does not contain any provision affecting the petitioners, and the petition does not allege or show that the petitioners have, nor have they in fact, any such interest in the objects and provisions of the Order as entitles them to be heard against it.

Beveridge (parliamentary agent, for petitioners (1) and (2)): This is a Provisional Order promoted by Sir John W. P. Campbell Orde, Baronet, to enable him to erect a pier on his property in Loch Efort, in the island and parish of North Uist, in the county of Inverness. Loch Efort is really an arm of the sea, and a common highway for ships going to and from the islands in the Hebrides. There is already a pier higher up the loch, which is a free pier, and the whole loch has hitherto been free from harbour rates of any kind, but by this Provisional Order, rates would for the first time be imposed on vessels using the pier, and also on vessels anchoring in the loch. Clause 11 of the Order empowers the undertakers, i.e., Sir John Orde, his heirs, and assigns, to levy the rates specified in the schedule to the Order, and those rates are by the schedule leviable on all vessels anchoring or mooring within the limits of the Order, as well as on goods landed at the pier authorised by the Order, and clause 35 of the Order provides that "no vessel or boat shall anchor within the limits of this Order without the consent of the undertakers, or their pier-master." Then clause 2 defines the limits to which the Order and the authority of the undertakers and their power to levy rates shall extend as "the pier and works authorised by the Order, and the area below high-water mark lying within a distance of one hundred yards from any part of the pier or works." The effect of that is to include the whole width

of the loch within the harbour limits. The petitioners who sign petition (1) are largely interested in this loch, and the Clyde Steamship Owners' association was formed for the purpose of watching all proposed legislation affecting shipping, and of taking measures for obtaining proper protection for the interests of steamship owners, and it includes most of the leading steamship owners whose vessels sail from the Clyde. The steamers entered with the association number 311, and have a gross registered tonnage of about 400,000 tons. Many of the smaller vessels trade to the West Highlands and Islands of Scotland, including the steamers of John McCallum & Co., one of the petitioners. Prior to 1878 there were two piers in the parish of North Uist free of all rates, one in Lochmaddy, the other in Loch Efort. In 1878 Sir John P. Orde, the father of the present baronet, obtained a Provisional Order, which was afterwards confirmed by Parliament, known as the Lochmaddy Order, for the construction of a pier, harbour and works in Lochmaddy in North Uist, upon the site of the previously existing free pier, which was partly utilised for the new works, and the public were thereby deprived of the use of the free pier at Lochmaddy, and have had to pay the heavy rates leviable under the Order of 1878. This Provisional Order now seeks to aggravate the evil, by subjecting vessels going to the free pier at Loch Efort to rates, and thus subjecting shipowners, merchants and inhabitants to the same heavy burdens at Loch Efort as have been imposed at Lochmaddy. Though there will, of course, be no obligation upon us to use this new pier, we shall on many occasions in effect be deprived of the use of the existing pier as a free pier, because we shall have to pay harbour rates if we moor or anchor within the limits of this Order in going to the free pier, and vessels are frequently obliged to do so for a time on account of the lowness of the water. In any case we should have to pass through the limits of this rated part, and if we wished to anchor there we should be also subjected to regulations, and might possibly be prohibited by the pier-master from anchoring at all, by virtue of his powers under clause 35 of the Order. It is a strong thing to touch free anchorage ground.

MR. CHANDOS-LEIGH: Is it not an advantage to the neighbourhood and to ships to have a pier here?

Beveridge: The county council, as well as the traders to the loch, think it is not because the public have all the accommodation they require at the free pier. This is an attempt

to take away the existing rights of ship-owners and other persons using the loch to the free use of any part of the loch by the imposition of dues, if they anchor within the limits of the Order, and by putting them under the control of the harbour master. The proposed limits of 100 yards from the pier extend right across the loch from one side to the other. I cite as an authority in my favour the cases of *The Lerwick Harbour Improvements Bill, 1877, on the petition of the North of Scotland and Orkney and Shetland Steam Navigation Company* (2 Clifford & Rickards, 25).

The CHAIRMAN: That bill proposed to levy certain dues at the harbour of Lerwick, and persons trading to the port were allowed a *locus standi*. Does not that case cover your ground?

Beveridge: Yes, I think it does, and there is also the case of the *Orkney Harbours Bill, 1887* (Rickards & Michael, 184), upon which we also rely as determining our right to a *locus standi*.

The CHAIRMAN: Is there any objection taken to the signatures of the petitioners?

Frere (parliamentary agent, for promoters): The objection is that the association does not represent any trade that would be affected by the provisions of the order.

The CHAIRMAN: That point was decided in the case of the *Glasgow and South-Western Railway (Steam Vessels) Bill, 1891, on the petition of the Clyde Steamship Owners' Association and others* (Rickards & Saunders, 115).

Beveridge: In that case the Court laid down the principle that "associations representing a particular trade may be heard, where associations representing a combination of various trade interests are not entitled to be heard."

The CHAIRMAN: Upon that principle the Clyde Steamship Owners' association has no right to a *locus standi* unless it represents a particular trade.

Beveridge: I contend that at any rate individual members of the association who sign as shipowners are entitled to a *locus standi*, following the decision in the *Glasgow and South-Western* case, where individuals were allowed to be heard.

The CHAIRMAN: That does not help the association in this case, where we do not have individual members of the association signing, but only the president and two directors as the officers and representatives of the association.

Beveridge: But these officers are also ship-owners, and are therefore entitled to be heard.

Mr. CHANDOS-LEIGH: But they sign as officers of the association only; they do not sign in their individual capacity.

Beveridge: In any event I contend that John McCallum & Co., who sign the petition in addition to and separately from the representatives of the association, are entitled to a *locus standi*.

Frere (in reply): I object to John McCullum and Co. being heard on the ground that this Order does not affect them. Rates are only to be levied on vessels anchoring or mooring within the limits of the Order, and they will therefore be in precisely the same position so far as regards rates in going up to the existing pier as they are now. They could pass through our limits up to the present free pier, and we should have no power to control them or levy any rate upon them, unless they moored or anchored within our harbour limits.

The CHAIRMAN: Traders and shipowners have an interest in the rates on goods and on ships levied in a harbour. Although it may be a very beneficial thing for a public authority or for a landowner to erect a pier and set up a harbour, the Court has always held that those persons who trade to the locality have an interest in seeing that the trade should not be obstructed, and have a right to suggest to Parliament reasonable conditions upon which it should be done, both as regards rates and as regards harbour limits.

Frere: If, in this case, there was an existing harbour and the conditions under which the harbour was used were altered, as in the *Lerwick Harbour* case, I should not object to the *locus standi*, but here there is only a small existing pier and no harbour, and there cannot be any trade at present to be affected. If McCallum and Co. are entitled to a *locus standi*, the owner of any vessel passing along any part of the coast to an existing pier at a particular spot would be entitled to be heard, when there was a proposal to erect a second pier near that spot. There is no existing trade to the present pier, and McCallum & Co. are in no different position to any others of the public, who, if they alleged that they might possibly wish to use a pier, access to which pier might be interfered with by the provisions of a particular bill, would clearly not be entitled to a *locus standi*.

Mr. ROUNDELL: You are making an area of anchorage ground chargeable with rates which is not chargeable at present.

Frere: Yes; but I contend that does not entitle the petitioners to be heard.

Mr. CHANDOS-LEIGH: They say that they could not, if this Order is confirmed, use that area without the consent of the undertakers, and they say that the payment for such consent is exorbitant and ask to be before

the Committee to see that it is properly adjusted.

Frere: The petitioners are merely members of the public. They are not traders to this place, and they are not obliged to pay the rates on goods landed at the proposed pier. They are, therefore, if at all, only entitled to be heard against that part of the Order that would impose a rate upon them when anchoring within the 100 yards limit.

The CHAIRMAN: We are of opinion that the *locus standi* of John McCallum & Co. ought to be allowed generally against the Order. We disallow the *locus standi* of the Clyde Steamship Owners association for the same reasons as were given in the *Glasgow and South-Western (Steam Vessels)* case, 1891 (Rickards and Saunders, 115).

Frere: I ask the Court to confine the *locus standi* to a traders' *locus standi* against rates. I submit that McCallum & Co. are not entitled to raise the point of the expediency of making the pier. Their petition raises all sorts of questions as to the expediency of making the pier here at all, but they are not entitled to go into that; they are only entitled to go into rates, and should be restricted to those clauses of the Order which relate to rates and to the limits, namely, clauses 2 (Limits of Order), 11 (Rates), 25 (Power to Borrow on the Security of Rates), and 30 (Application of Moneys).

Beveridge: I object to being limited in that way.

The CHAIRMAN: The question is whether the *locus standi* should be limited in the way suggested, or whether the petitioner should be allowed a general *locus standi*. Now I quite see the force of the objection urged to a general *locus standi*, but, on the other hand, very great inconvenience would result if the *locus standi* were limited to the question of the amount of rates and the extent of the limits. For example, I can quite understand that owners of vessels trading to the port might desire to urge that the pier should not be constructed in the particular place proposed, but should be a short distance below or a short distance above, or that the proposed pier was too long. Arguments of that kind are all matters to consider. I cannot imagine that any committee would allow a general *locus standi* to be used as a means of obstructing a landowner in building a pier upon his own property. Therefore the *locus standi*, John McCallum & Co., will be a general one.

Frere: The petition (2) of the county council of Inverness raises the same points as are raised in petition (1), and after the decision of the Court in that case, I concede the *locus standi* of the county council.

Locus Standi of the Clyde Steamship Owners' Association *Disallowed*.

Locus Standi of John McCallum & Co. *Allowed*.

Locus Standi of the County Council of the County of Inverness *Allowed*.

Agents for Petitioners (1) and (2), *Beveridge*.

Agents for the Bill, *Rees & Frere*.

ST. ANDREWS LINKS BILL.

Petition of INHABITANTS, OWNERS, RATEPAYERS, AND OTHERS in the BURGH OF ST. ANDREWS.

19th April, 1894.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Mr. ROUNDELL, M.P.; Mr. PARKER-SMITH, M.P.; and The Hon. E. CHANDOS-LEIGH, Q.C.)

Corporation of Scotch Burgh—Acquisition of Golf Links as Recreation Ground—Power to Borrow—Levying of Rates for Purchase Money and use of Golf Links—Inhabitants, Ratepayers, and Owners, &c., in Burgh—Public Meeting—Increase of Local Taxation—Interference with existing Privileges of Inhabitants—Absence of Distinct Interests—Representation—Duplicate Petition raising same Points—Burgh Police (Scotland) Act, 1892—Promoters as Police Commissioners—Municipal Corporations (Borough Funds) Act, 1872.

The bill empowered the provost, magistrates, and council of the royal burgh of St. Andrews, as commissioners of the burgh for the purposes of the Burgh Police (Scotland) Act, 1892, to acquire compulsorily the links of St. Andrews for a public park and recreation ground; and for this purpose to borrow a sum of £10,000 on the security, for the repayment of principal and interest, of the burgh general assessment leviable by them under the above-mentioned Police Act. The object of the acquisition of the links was to secure their use for the purposes of golf, and the bill gave power to the commissioners to regulate the use of the links for this purpose, and to expend money in maintaining a golf course or courses and regulating the playing of the game, and the commissioners were empowered to levy a rate upon all persons playing golf on the links, as an additional means of providing for the

expenses of maintaining and regulating the links as a golf ground, which expenses were also chargeable to the general burgh assessment, in the same manner as the payment of the principal and interest of the purchase money of the links. The petitioners were a number of inhabitants, owners, lessees, and occupiers of property in the burgh, and the chairman of a public meeting of inhabitants, &c., held to protest against the bill. The petitioners claimed to be heard (1) on account of the increased taxation upon property in which they were interested, which would result from the bill; and (2) on the ground that the bill would deprive them of the privilege, which they had hitherto enjoyed, of playing golf upon the links free of charge. The *locus standi* of the petitioners was objected to generally on the ground that as ratepayers they were represented by the corporation, who promoted the bill under their common seal; and that as regards those of the petitioners who were owners, they did not, as owners, contribute to the rates, and would therefore not be called upon to contribute to the additional rate leviable under the bill; and it was also urged that the interests of golf players were sufficiently represented by the petition of the trustees of a golf club, whose *locus standi* was not objected to, which raised the same points as the petition before the Court:

Held, that those of the petitioners who were merely ratepayers were not entitled to be heard, but that those of the petitioners who were owners (including in that term holders of leases for a substantial term of years) were entitled to be heard, according to previous decisions of the Court.

The *locus standi* of the petitioners was objected to on the following grounds: (1) no lands or other property belonging to the petitioners are proposed to be taken under the powers of the bill; (2) the petitioners, whether as inhabitants, owners, lessees, or occupiers of property, or ratepayers, and the said John Paterson, as chairman of the alleged public meeting referred to in the petition, vote in the election of, or are all of them represented by the provost, magistrates, and council of the

city and royal burgh of St. Andrews as representing the community thereof, and also as the commissioners of that burgh under and for the purposes of the Burgh Police (Scotland) Act, 1892. The bill is promoted by the said provost, magistrates, and council as representing the community of St. Andrews under the common or corporate seal of the burgh of St. Andrews, and also by the said provost, magistrates, and council as commissioners aforesaid, and the petitioners are therefore not entitled to be heard in opposition to the bill; (3) the petitioners have not any interest or grievance, so far as the provisions of the bill are concerned, separate or distinct from the general body of the inhabitants and owners, lessees, and occupiers, and ratepayers in St. Andrews; (4) the petitioners are not entitled to represent and do not represent any class or classes of the community of St. Andrews, who would, according to the practice of Parliament, be entitled to be heard against any of the provisions of the bill and in opposition to the common seal; (5) in any view the petitioners are so comparatively few and represent so comparatively small a portion of the rateable value of the property in St. Andrews, that they are not, according to the practice of Parliament, entitled to be heard against the bill; (6) of those whose signatures are attached to the petition, the principal persons are members of the royal and ancient golf club of St. Andrews, on whose behalf another petition, raising similar questions and signed by the trustees of the club has been deposited; they will accordingly be heard in that behalf and do not need to be heard twice over. Some of the persons signing as inhabitants, &c., within the city of the royal burgh of St. Andrews are not in fact electors or ratepayers of St. Andrews or otherwise qualified; some are known to have been at sea when the petition was in course of signature; some have withdrawn their signatures, and some are illiterate persons whose signatures could not, in any event, be genuine; (7) the statements made in the petition are, moreover, erroneous and misleading, because the bill for the acquisition of the links by the commissioners on behalf of the town is promoted in accordance with the feeling of the town, as expressed at meetings duly convened; and at the municipal elections no candidate opposed to such acquisition was returned. On the 17th March, 1894, a further meeting of the ratepayers, with the provost in the chair, "heartily endorsed what had been done by the commissioners in pressing on the bill and authorised them to go on as they had been doing," and the meeting of the 19th March,

1894, referred to in the petition, though called by placards for the purpose of opposition to the bill, in fact negatived the resolution instructing the chairman to sign the hostile petition, and ultimately declared in support of the bill; (8) the petition does not disclose any grounds on which, according to the Standing Orders of this House, or the practice of Parliament, the petitioners, or any of them, are entitled to be heard either against the preamble of the bill or against any of the clauses and provisions of the same.

Erskine Pollock, Q.C. (for petitioners): This is a bill to enable the provost, magistrates, and council of St. Andrews, as the commissioners of the burgh under the Burgh Police (Scotland) Act, 1892, to acquire compulsorily the links of St. Andrews for a public park and recreation ground. The petitioners are owners, lessees, and occupiers of property and ratepayers within the burgh, and also John Paterson, a commissioner and ex-provost of the burgh, who signs the petition as chairman of, and by the authority and on behalf of, a public meeting of inhabitants and ratepayers of the burgh held on the 19th March, 1894. The question involved in the case is a new one. It is the question of a corporation acquiring a golf ground for the purpose of enabling golf and other games to be played thereon, and proposing to levy a rate on persons playing golf on what has hitherto been a free public ground. The promoters in the preamble of the bill state that the golf ground, prior to the year 1797, belonged to them, but when they parted with possession of it in 1797 they reserved to the inhabitants the right to play golf upon the links. This has hitherto been a free right, but the bill empowers the commissioners to levy a rate upon all persons, including the inhabitants of the burgh. At the public meeting of inhabitants, owners, lessees, and occupiers, representing a total yearly rateable value of £13,500, out of a total rateable value in the burgh of £41,000, held on the 19th of March, 1894, a resolution was passed condemning this bill and directing that a petition should be lodged against it and signed by the chairman on behalf of the meeting. The present petition was accordingly prepared and received about 400 signatures, although some of these signatures have since been withdrawn.

The CHAIRMAN: Is the point in this case whether inhabitants can be heard against the seal of their corporation?

Pembroke Stephens, Q.C. (for promoters): The first point, broadly, is representation; the second is that as regards any particular interest of golf-players there is a separate

petition, that of the Royal and Ancient Golf Club of St. Andrews, whose *locus* is not disputed, signed by a number of the same persons who sign this petition, which properly deals with the golf interest, and raises the same points.

Pollock: The owners allege that their property would be injuriously affected by increased rates, inasmuch as £10,000 is to be raised on the security of the general burgh assessment under the borrowing powers contained in clause 11 of the bill for the purchase of the links, and in addition the promoters ask for powers in clause 9 to levy rates upon all persons playing golf upon the links, in order to provide for the upkeep and maintenance of the links, which is also to be charged upon a rate levied upon property within the burgh, in accordance with the provisions of the Burgh Police Act of 1892, in the same way as the principal and interest of the borrowed money. It is admitted that an increase in rates must diminish rental value and so affect the owners of property, and occupiers would, of course, be affected by such rates, according to the terms of their leases. This case falls within the principle laid down by this Court that where people have had the right to something free of cost, which it is proposed by the bill to take away, or where it is proposed to impose anything in the nature of a toll on the exercise of that right, those people have a right to be heard against the bill. It must be borne in mind that St. Andrews is a Scotch burgh, and that there is consequently no meeting of ratepayers called to approve of the promotion of a private bill as there must be in an English borough in accordance with sect. 4 of the Municipal Corporations (Borough Funds) Act, 1872. The vote recorded against the bill at the public meeting held on the 19th March, 1894, must therefore be regarded as taking the place of a meeting under that Act.

Stephens: 150 signatories to the petition have already withdrawn from it.

The CHAIRMAN: There is a doctrine of this Court that as a general rule ratepayers are not allowed to be heard against the common seal, and then there are certain distinctions made by the practice of the Court with regard to owners, but are there not some reported cases in which a substantial number of ratepayers appearing have been allowed to be heard?

Pollock: I think so, where there has been a substantial body of ratepayers, and where they have alleged some special injury. The promoters say we are represented by the corporation and cannot therefore petition against a bill which is promoted by the corpo-

ration, but a large portion of the petitioners are owners who complain that their property would be injuriously affected, and they are not represented and are therefore entitled to a *locus standi*. Whilst some of the petitioners are owners and also occupiers, there are some who are not occupiers, and who therefore would not have a vote in the election of the governing body. But assuming they all had votes the principle remains that they are owners whose property would be injuriously affected by the bill, and it is upon that ground that owners have been allowed a *locus standi* to protect their interest.

Mr. CHANDOS-LEIGH: Can you refer us to any recent case in which we have allowed a substantial number of ratepayers to be heard?

Pollock: The most recent case was the *Hornsey Local Board Bill, 1893, on the petition of Owners and Lessees of property in Hornsey* (Rickards & Saunders, 276).

Mr. CHANDOS-LEIGH: That was not a case of ratepayers exclusively.

The CHAIRMAN: We appreciate the case you have made as regards owners. Will you tell the Court on what grounds you say in this particular case ratepayers ought to be heard contrary to the general rule that ratepayers cannot be heard against the common seal of the local authority?

Pollock: The point I rely upon with regard to the right of the inhabitants *quâ* ratepayers to be heard is this, that the question of the acquisition of this ground for the public for golf is not an ordinary ratepayers' question that would be present to the minds of those who were electing their representatives, and is not an ordinary municipal question as to which they are represented.

Stephens: It was the principal question at the last municipal election.

Mr. CHANDOS-LEIGH: I call your attention to the case of the *Edinburgh Municipal and Police Bill, 1879, on the petition of John Hope* (2 Clifford & Rickards, 149).

Pollock: In every case it is within the discretion of the Court to grant a *locus standi* to ratepayers *quâ* ratepayers. A further reason for granting the *locus standi* in this case is that the corporation declined to allow a plebiscite to be taken to see how the ratepayers felt on this question, and thereupon the petitioners called a public meeting, and a resolution to oppose the bill was passed. On the question of the sufficiency of the numbers of petitioning inhabitants to constitute a representative body, in the *Pontypool Gas and Water Bill, 1873* (1 Clifford & Rickards, 51), only 175 petitioned out of a population of between 30,000 and

40,000, and yet they were allowed to be heard.

Mr. CHANDOS-LEIGH: That was a case of consumers.

The CHAIRMAN: If you are going to rely upon the public meeting, as distinguished from the signatures to the petition, you would have to prove it, but in this case I do not think it would carry the matter much further.

Stephens (in reply): With regard to the question of representation, unless an owner is in some way subjected to some burden by the bill of the corporation, the mere fact of his being an owner does not give him any right to oppose the bill. The bill empowers the commissioners of the burgh of St. Andrews to buy back these links, so that they should again become the property of the burgh. Since the corporation parted with these links, the Royal and Ancient golf club of St. Andrews has practically provided the funds necessary to maintain the ground, and there is no reason to suppose that the mere change in the ownership of the land will cause any expense to be thrown upon the rates, but if there was any withdrawal of this assistance by the club, then there would be an expenditure by the corporation towards the maintenance of the ground. There is no reason, however, to anticipate this withdrawal, so that the extent of the burden which will in all probability be imposed on the town by this bill will be the payment of the principal and interest of the purchase money of the links, amounting to £10,000. All ratepayers are represented by the commissioners, and there is no power in the bill to levy a charge upon owners, but only power to borrow at interest upon the security of the general rates leviable by the corporation as police commissioners under the Burgh Police Act, and those rates will fall upon ratepayers, *i.e.*, occupiers, not upon owners. As to the argument that we shall deprive the inhabitants of the burgh of their present privilege of playing golf on the links free of charge, we are willing to insert a clause in the bill exempting present inhabitants of the burgh from the payment of any rate for playing golf.

The CHAIRMAN: Our practice for purposes of *locus standi* is to take the bill as deposited.

Stephens: I contend that the bill will make no substantial alteration in the *status* of owners.

The CHAIRMAN: In the case of the *petition of John Hope against the Edinburgh Municipal and Police Bill, 1879* (2 Clifford & Rickards, 149), a single owner petitioned, who undoubtedly had a vote in the election of the town council, and was allowed a *locus standi*. Does it not therefore follow that the fact that an owner

has a vote in the election of the town council has nothing to do with the question?

Stephens : The distinction between that case and the present was that there the petitioner was very directly affected by the money provisions of the bill.

The CHAIRMAN : The case the petitioner made was common to every other owner in Edinburgh.

Stephens : This is at most a conditional liability to rates, except in respect of the original purchase money. There is no power taken to charge any owners. The power is to levy a rate upon all ratepayers, and the petitioners have no special interests from other ratepayers, and are represented by the corporation.

Pollock : The effect of increased taxation is to decrease the value of the property subjected to it, and I contend that an occupier of a tenement on a lease of substantial duration would be entitled to the same *locus standi* as an owner.

Stephens : I doubt if there are any occupiers of that class signing on the petition. With regard to the other petitioners, no individual right is interfered with, for none of them have any individual right on the golf ground, but merely a right in common with all members of the community, and all ratepayers are represented by the town council.

The CHAIRMAN : We are of opinion that those of the petitioners who are merely ratepayers have no *locus standi* according to the previous cases decided by the Court. As regards the question who are owners and who are not, we decided in the case of the *Hornsey Local Board Bill*, 1893 (*Rickards & Saunders*, 276), that a leaseholder for a substantial term of years is in the same position as an owner for purposes of *locus standi*.

Locus Standi Disallowed except as to petitioners being owners of property in the burgh of St. Andrews.

Agents for Petitioners, *Durnford & Co.*

Agents for Bill, *Robertson & Co.*

WEST HIGHLAND RAILWAY (MALLAIG EXTENSION) BILL.

Petition of THE CALLANDER AND OBAN RAILWAY COMPANY AND THE CALEDONIAN RAILWAY COMPANY.

12th April, 1894.—(*Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Mr. ROUNDELL, M.P.; Mr. HEALY, M.P.; The Hon. E. CHANDOS-LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

[Mr. Parker-Smith, M.P., who had been previously sitting as a member of the Court, stated that he would not take any part in this case, his name being on the back of the bill.]

Railway Extension and Construction of Harbour
—*Competition, New or Improvement of Existing*
—*Sea-borne Traffic—Competing Ports.*

Practice—Working Agreement in Perpetuity —
Right of Working Company to be heard in addition to Owing Company.

The bill authorised the extension of the West Highland railway from Banavie, the present terminus of the railway on the Caledonian canal, close to Fort William, to Mallaig on the west coast of Scotland, where harbour works were authorised to be constructed by the bill, the proposed extension railway being about 40 miles in length. In 1889 the West Highland railway company sought Parliamentary powers, in the bill by which they were incorporated, to construct a railway from Glasgow *via* Fort William and Banavie to Roshven, a point on the west coast 12 miles south of Mallaig, but Parliament refused to sanction the proposed railway beyond Banavie, the present northern terminus of the railway. The petitioners, who claimed a *locus standi* against the bill were the Callander and Oban and the Caledonian railway companies. The railway of the former company extended from Callander, where it formed a junction with the Caledonian railway, to Oban on the west coast, about 40 miles south of Mallaig, and it was worked under an agreement in perpetuity by the Caledonian company. The petitioners claimed to be heard on the ground of the com-

petition that would be created at Mallaig for fish and other sea-borne traffic with Oban, the terminus of the Callander and Oban railway, and at present the only port on this portion of the west coast of Scotland.

It was contended on behalf of the promoters that the bill at most authorised an improvement of existing competition, inasmuch as the West Highland railway already extended to Fort William on Loch Eil and Banavie on the Caledonian canal, from both of which places sea-borne traffic could already reach the West Highland railway, at a point nearer to and therefore more competitive with Oban than Mallaig; and formal objection was taken to the Caledonian company, who worked the Callander and Oban railway in perpetuity at cost price, being heard in addition to the latter company :

Held, that the competition created by the bill was not merely an improvement of existing competition, and was of such a character as to entitle the petitioners to be heard; and that, following the decision in the *West Highland Railway Bill*, 1889 (Rickards & Michael, 311), the objection to the *locus standi* of the Caledonian company as the working company could not be sustained.

The *locus standi* of the petitioners was objected to on the following grounds: (1) no lands, rights, or property of the petitioners or either of them are proposed to be taken, interfered with or affected by the bill; (2) the railway proposed to be authorised by the bill is situated in a totally different district, and many miles away from the railways of the petitioners; (3) as a shareholder in the Oban company's undertaking the Caledonian company is not entitled to be heard against the bill, as its interests as such are represented by the Oban company, and it has no distinct interests such as would, according to the practice of Parliament, entitle it to be heard independently; (4) as the company working the Oban line under the agreement scheduled by the Callander and Oban Railway (Abandonment, &c.) Act, 1870, which provides that the line shall be worked at cost price, the Caledonian company has no such interest in the Oban line,

the traffic thereon, and the revenue therefrom, as entitles it to be heard against the bill on the alleged grounds of the abstraction from the aforesaid railway of any part of its traffic; (5) in the year 1889, when the bill for the construction of the main line of the West Highland company which crosses the Oban line at Crianlarich, was before Parliament, both the Caledonian and Oban companies appeared in opposition, but in spite of their opposition Parliament thought fit to pass the bill. These two companies are not now entitled to be heard to say that a new branch commencing at a point 40 miles from the Oban line and running directly away from it ought not to be sanctioned; (6) under the powers of its Act of 1890, the West Highland company is at present constructing its line to the west coast at Banavie, at which point there is connection with the Glasgow steamers, and even if it were true, which the promoters deny, that the railway and pier proposed by the bill would compete with and abstract traffic from the railway of the Oban company to any appreciable extent, this would not be such new competition as, according to the practice of Parliament, would entitle the petitioners or either of them to be heard to oppose the bill; (7) the suggestion made in the 16th paragraph of the petition that the needs of the district on the coast north of Oban and of the western islands would be better provided for by an extension of the Oban company's line does not give to the petitioners or either of them any right to be heard against the bill. It is not the practice of Committees to inquire into the merits of a scheme which is not before Parliament; (8) no grounds are disclosed by the petitioners which entitle them or either of them, according to the practice of Parliament, to be heard against the bill.

Pember, Q.C. (for petitioners): In 1889 there was a scheme before Parliament for making a railway, called the West Highland railway, from Helensburgh to Banavie, which is on the Caledonian canal close to Fort William, and thence on to Roshven on the west coast, where a harbour was proposed to be constructed. The line was authorised as far as Banavie, but the scheme, so far as it provided for making a line from Fort William to Roshven, was rejected. This bill proposes in lieu of that line to Roshven to make an extension railway forty miles in length, from Banavie to Mallaig on the west coast, a place about twelve miles north of Roshven, where also there is a deep natural harbour, which is to be protected by a pier and breakwater, also authorised by clause 4. By clauses 51 and 52 of the bill it is provided that the Treasury may guarantee interest or

dividend on the capital to be raised under the bill, and may issue out of the consolidated fund a sum to fulfil any guarantee of interest under the bill.

The CHAIRMAN : Clauses of that kind would have to be inserted in a Committee of the whole House.

Pember : Yes. But they are in the bill, and it is clearly the intention of the promoters to get from Parliament a subsidy for the making of this line in some form or other if they can.

Mr. CHANDOS-LEIGH : The Treasury objected to these clauses because they created a charge upon the consolidated fund, and they have, therefore, been cut out of the bill altogether, and are not to be proceeded with.

Pember : Although we may have a guarantee that these clauses will not appear in the bill as referred to a Committee, there is no guarantee that the Treasury may not carry out this proposal in some other way by a public bill. What we wish to have the opportunity of arguing before the Committee is that these clauses to some extent are based upon the report of a Government Commission, which has been sitting upon this matter, and that our case, which is one of competition, is enormously strengthened by the fact that there is a scheme for giving public money by way of subsidy to the promoters of this line. The Callander and Oban line runs from near Stirling to the deep water harbour of Oban, and it is worked under an agreement in perpetuity by the Caledonian company, who are large shareholders in it. The two companies opposed the making of the West Highland line from Helensburgh to Roshven in 1889, on the ground of the keen competition which would be created between the proposed port of Roshven and Oban for all traffic from the Highlands to and from the Hebrides and other islands. Our *locus standi* was not objected to in the House of Lords, and in the result the part of the line between Banavie and Roshven was thrown out by the Lords' Committee on the bill. This bill proposes to set up precisely the same competition again, and the fact that the line is to go to Mallaig, 12 miles further north, instead of to Roshven, is of no importance, nor does a distance of some 40 miles between the competing points of Oban and Mallaig alter the complexion of the case. After that part of the line to Roshven had been thrown out by the Lords, the promoters thought our case of competition would be considerably weakened, and they therefore opposed our *locus standi* in the House of Commons, but with the result that we obtained a general *locus standi* on the ground of competition even without that part of the line (*West Highland*

Railway Bill, 1889, Rickards & Michael, 311). There can be no doubt in the present case of the competition that would arise between the Callander and Oban railway, and the proposed extension to Mallaig, which is practically a re-introduction of the extension to Roshven proposed in 1889. This bill proposes to set up a perfectly new competition of port against port. There is now no competition between Oban and any port in the neighbourhood, and whether this port, which we say will be in competition with our port at Oban, is at a distance of 40 miles or more, makes no difference in principle. Mallaig will compete for fish and other sea-borne traffic with Oban, and will deprive the Callander and Oban company of traffic, which at present reaches their railway at Oban.

Acworth (for promoters) : In the *West Highland Railway Bill*, 1889, the petitioners had an undoubted *locus standi* as we crossed their line, and we could not, therefore, object to their appearing, but inasmuch as there was no agreement with the North British company for the working of the line from Fort William to Roshven, and as it could not therefore be supposed to be very remunerative in itself, it was a strong argument that the line would not in fact be made, and that was one reason for the Committee of the House of Lords refusing to sanction that part of the line. It appears from the report of the case before this Court (Rickards & Michael, p. 313) that it was distinctly stated that if the West Highland railway was allowed to be made to Fort William there would be competition with the Caledonian at Oban for sea traffic, but having got to Fort William in 1889, and to Banavie in 1890, we are now entitled to say that the proposed extension to Mallaig is merely an improvement of existing competition. We are now asking for power to make a line which is a great deal further off from Oban than the port we were allowed to go to in 1889.

Mr. BONHAM-CARTER : The additional distance between the ports makes very little difference. We have had cases on the eastern counties where the distance was 70 or 80 miles.

Acworth : Assuming that this is competition, it is only sea competition. This Court has held that that is different from the competition of lines abstracting traffic from the same area of country. The question here is as to competition for traffic brought by sea only, and is practically the same question as in the *Glasgow and South-Western Railway (Steam Vessels) Bill*, 1891, on the petition of *Lanarkshire and Ayrshire and Caledonian Railway Companies* (Rickards & Saunders, 111), where the peti-

tioners objected to the promoters obtaining power to run steamboats. The Chairman then said: "Where a company proposes to run alongside an existing line, the existing company has a strong case, but the case of competition by sea is not so strong." If the Court should think that the petitioners are entitled to a *locus standi*, it should be limited to competition at Mallaig only, and they should not be allowed to discuss the engineering features of our line.

The CHAIRMAN: If they have any *locus standi* upon the ground of competition that covers the whole ground, including engineering and estimates.

Acworth: The only other point is whether the Caledonian company should not be excluded, even if the Callander and Oban were given a *locus standi*. The Callander and Oban railway is worked in perpetuity by the Caledonian company, and both companies should not be heard.

Pember: I did not argue that point because it was decided in my favour in 1889.

The CHAIRMAN: Is it not enough that the Caledonian company are working the Callander and Oban?

Acworth: They are working under a special agreement. The Caledonian company also claim to be heard as shareholders in the Callander and Oban company.

The CHAIRMAN: You need not labour that point as we shall not give them a *locus standi* as shareholders, but on the ground of competition. We are of opinion that the *Locus Standi* in this case has been made out.

Agents for Petitioners, *Grahames, Currey and Spens*.

Agents for Bill, *Durnford & Co*.

WEST RIDING RIVERS CONSERVANCY BILL.

Petition of (1) THE MORLEY CHAMBER OF COMMERCE; (2) THE WAKEFIELD INCORPORATED CHAMBER OF COMMERCE AND SHIPPING.

3rd May, 1894.—(Before Mr. SHIRESS WILL, Q.C., M.P., Chairman; Sir GEORGE RUSSELL, M.P.; Mr. ROUNDELL, M.P.; Mr. PARKER SMITH, M.P.; and The Hon. E. CHANDOR-LEIGH, Q.C.)

Rivers Conservancy—Prevention of Pollution—Interference with Trade—Chambers of Commerce claiming to represent Traders injuriously affected by Bill—Local Government Act, 1888, sect. 14, sub-sect. 3 [Power to County Council

to enforce provisions of 39 & 40 Vict., c. 75 (Rivers Pollution Prevention Act, 1876)]—S. O. 133A [Chambers of Commerce, &c., may be heard in relation of Railway Rates and Fares] discussed.

This was a bill to make more effectual provisions for preventing the pollution of the rivers of the West Riding of Yorkshire, and was promoted by a joint committee of the County Council of the West Riding and the Councils of the county boroughs in the West Riding constituted under the Local Government Act, 1888. The respective chambers of commerce of Morley and Wakefield, two boroughs in the West Riding, petitioned against the bill on the ground that it would unduly interfere with trades and manufactures in their respective boroughs, and claimed to represent the traders and manufacturers, who would, they alleged, be injuriously affected by the bill. The petitioners drew attention to the fact that chambers of commerce were by the Railway and Canal Traffic Act, 1888, allowed under certain restrictions to make complaints to the Railway Commissioners, and could also be heard against a private bill dealing with railway rates and fares under S. O. 133A, and urged that they were entitled to a similar right to be heard against the present bill. The municipal corporations of both Morley and Wakefield had petitioned against the bill, and their *locus standi* was not disputed:

Held, that the claim of the petitioners to be heard in their corporate capacity as chambers of commerce could not be allowed in view of the limitation prescribed by S. O. 133A, the Court pointing out that it was competent for individual traders, whom the petitioners claimed to represent, to have petitioned against the bill.

The *locus standi* of the petitioners (1) was objected to on the following grounds: (1) the petitioners are not the municipal or other authority having the local management of any town or district affected by the bill; (2) the petitioners are not a trading corporation and

are not injuriously affected by the bill, nor do they so allege; (3) the petitioners are a private association and do not represent the trade or manufacturing industry of the borough of Morley; (4) the corporation of Morley have petitioned against the bill, raising the same points as are raised by the petitioners, and the promoters have not objected to the right of the corporation to be heard on their petition; (5) there is nothing in the bill which alters or affects the *status* of the petitioners; (6) the petition does not allege or disclose any right, or interest, or any ground of objection which, according to the practice of Parliament, entitles the petitioners to be heard against the bill.

The *locus standi* of the petitioners (2) was objected to on similar grounds, the corporation of Wakefield having also petitioned against the bill, and their *locus standi* not having been objected to.

Pritchard, parliamentary agent (for petitioners (1) and (2)): The bill is promoted by the joint committee of representatives of the West Riding of Yorkshire and of the county boroughs of Bradford, Halifax, Huddersfield, Leeds, and Sheffield, constituted by Provisional Order under sub-sect. 3 of sect. 14 of the Local Government Act, 1888, and is primarily for the purpose of enforcing the provisions of the Rivers Pollution Prevention Act, 1876, but it contains some more stringent provisions. The chambers of commerce represent manufacturers, and it is only with regard to the provisions of the bill affecting manufacturers that we object.

The CHAIRMAN: Does this bill alter the Rivers Pollution Prevention Act, 1876?

Pritchard: Yes, to a considerable extent. For instance, clause 10 which deals with polluting liquids is the same as the first part only of sect. 4 of the Rivers Pollution Act, but the whole of the latter portion of sect. 4, which is a great protection to manufacturers, is omitted from clause 10, and the chambers of commerce wish to be heard to object to this.

Pope, Q.C. (for promoters): We do not dispute that the interests of some manufacturers will be materially affected by this bill, or that we shall affect sanitary questions in respect of which the corporations of Morley and Wakefield, who petition, are entitled to be heard as

representing the towns, but we contend that whatever individual trading interests may be affected, a chamber of commerce is not the body to represent them.

Pritchard: The earlier decisions of this Court are undoubtedly against the right of chambers of commerce to be heard as representing manufacturers, but since the passing of S. O. 133A, which allows chambers of commerce to be heard against bills dealing with railway rates and fares, and since the Railway and Canal Traffic Act, 1888, which gives them a right as public bodies to go before the Railway Commissioners, the *status* of chambers of commerce has altered. Formerly they were regarded merely as consulting bodies and bodies for collecting information, but now they are entitled to take action, and we contend that the time has arrived when this Court might properly extend its practice and give chambers of commerce a *locus standi* against bills of such a nature as the present.

Mr. CHANDOS-LEIGH: S. O. 133A was carefully considered when it was made, and the question was raised whether we should give chambers of commerce a discretionary *locus standi* against bills affecting the general interests represented by them, and it was decided that the Standing Order ought only to apply to the particular matter to which it relates.

Pritchard: This was clearly one of the objects of the incorporation of the Wakefield chamber of commerce, which, as appears from the memorandum of association, was formed "for the promotion of the trade, commerce, shipping, and manufactures of the city and district, and for promoting, supporting, or opposing legislation or other matters affecting those interests."

The CHAIRMAN: That object is not necessarily defeated if we do not allow a *locus standi* in this case, because in future the petition can be signed by the individual firms affected.

The *Locus Standi* of both petitioners is Disallowed.

Agents for Petitioners (1 and 2), *Sharpe and Co.*

Agents for Bill, *Dyson & Co.*

INDEX OF CASES

(BILLS AND PETITIONS)

OF THE SESSIONS 1890-91-92-93-94, REPORTED IN THIS VOLUME.

	PAGE
AIRE AND CALDER AND RIVER DUN NAVIGATIONS JUNCTION CANAL BILL, 1891 (H.L.). <i>Petition of</i> OWNERS AND MASTERS OF RIVER CRAFT PLYING ON THE RIVERS HUMBER AND TRENT AND THE SHEFFIELD AND SOUTH YORKSHIRE NAVIGATION, COMMONLY CALLED THE SHEFFIELD AND KEADRY CANAL, BETWEEN HULL AND SHEFFIELD AND INTERMEDIATE PLACES ON THE SAID RIVERS AND NAVIGATION, AND THE AMALGAMATED SOCIETY OF LIGHTERMEN AND WATERMEN OF THE RIVER HUMBER	77
ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY BILL, 1890 (H.L.). <i>Petition of</i> (1) THE RHYMNEY RAILWAY COMPANY	1
„ (2) THE TAFF VALE RAILWAY COMPANY	3
ASHTON-UNDER-LYNE CORPORATION BILL, 1893. <i>Petition of</i> (1) THE AUDENSHAW LOCAL BOARD OF HEALTH	237
„ (2) THE CHESHIRE COUNTY COUNCIL	237
AYR HARBOUR BILL, 1890. <i>Petition of</i> (1) THE ARDROSSAN HARBOUR COMPANY; AND (2) THE DUKE OF PORTLAND	5
BARRY RAILWAY BILL, 1893. <i>Petition of</i> (1) THE GREAT WESTERN RAILWAY COMPANY	240
„ (2) THE NATIONAL TELEPHONE COMPANY	242
BEVERLEY AND EAST RIDING RAILWAY BILL, 1890. <i>Petition of</i> THE SCARBOROUGH, BRIDLINGTON, AND WEST RIDING RAILWAY COMPANY	10
BILSTON COMMISSIONERS WATER BILL, 1890. <i>Petition of</i> THE GUARDIANS OF THE POOR OF THE SEISDON UNION	11
BLACKPOOL IMPROVEMENT BILL, 1892. <i>Petition of</i> THE NATIONAL TELEPHONE COMPANY	167
BRADFORD CORPORATION WATER BILL, 1892. <i>Petition of</i> THE LIVERSEDGE LOCAL BOARD	169
BRITON MEDICAL AND GENERAL LIFE ASSOCIATION BILL, 1890. <i>Petition of</i> (1) GEORGE MORLEY	11
„ (2) BERNARD BOALER	11
BURRY PORT AND GWENDREATH VALLEY RAILWAY BILL, 1891 (H.L.). <i>Petition of</i> (1) THE LOCAL BOARD OF HEALTH FOR THE DISTRICT OF THE BOROUGH OF LLANELLY	81
„ (2) THE LLANELLY HARBOUR AND BURRY NAVIGATION COMMISSIONERS	81
„ (3) THE GREAT WESTERN RAILWAY COMPANY	81

	PAGE
BUTE DOCKS (CARDIFF) BILL, 1890 (H.L.).	
<i>Petition of</i> (1) THE BARRY DOCKS AND RAILWAYS COMPANY	12
„ (2) THE ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY COMPANY, AND OF THE NEWPORT (ALEXANDRA) DOCK COMPANY, LIMITED	12
„ (3) THE GREAT WESTERN RAILWAY	14
„ (4) THE PONTYPRIDD, CAERPHILLY AND NEWPORT RAILWAY COMPANY ..	16
„ (5) LORD TREDEGAR	17
BUTE DOCKS (CARDIFF) BILL, 1894 (H.L.).	
<i>Petition of</i> (1) NIXON'S NAVIGATION COMPANY, LIMITED, AND THE POWELL DUFFRYN STEAM COAL COMPANY, LIMITED	313
„ (2) LORD WINDSOR	318
BUXTON LOCAL BOARD BILL, 1892.	
<i>Petition of</i> (1) SAMUEL HYDE AND WILLIAM BLACKWOOD	171
„ (2) THE LEEK AND MOORLANDS BUILDING SOCIETY	171
CALEDONIAN RAILWAY (ADDITIONAL POWERS) BILL, 1891.	
<i>Petition of</i> THE NORTH BRITISH RAILWAY COMPANY	87
CARDIFF CORPORATION BILL, 1894.	
<i>Petition of</i> (1) NIXON'S NAVIGATION COMPANY, LIMITED	320
„ (2) THE CARDIFF GAS LIGHT AND COKE COMPANY	324
„ (3) THE PENARTH LOCAL BOARD	327
„ (4) COMMONERS OF COMMON LANDS IN THE PARISH OF CANTREFF ..	328
CENTRAL LONDON RAILWAY BILL, 1891	90
CORK AND FERMOY AND WATERFORD AND WEXFORD RAILWAY BILL, 1890.	
<i>Petition of</i> (1) THE GREAT SOUTHERN AND WESTERN RAILWAY COMPANY	19
„ (2) THE NEW ROSS HARBOUR COMMISSIONERS AND MERCHANTS, INHABITANTS, &C., OF NEW ROSS	20
„ (3) THE WATERFORD BRIDGE COMMISSIONERS	23
CROYDON AND CRYSTAL PALACE RAILWAY BILL, 1890.	
<i>Petition of</i> THE SOUTH-EASTERN RAILWAY COMPANY	25
DUBLIN SOUTHERN DISTRICT TRAMWAYS BILL, 1893 (H.L.).	
<i>Petition of</i> THE DUBLIN, WICKLOW, AND WEXFORD RAILWAY COMPANY	242
DUNDEE EXTENSION, POLICE, IMPROVEMENT AND TRAMWAYS BILL, 1892.	
<i>Petition of</i> BUTCHERS AND FLESHERS IN DUNDEE AND LOCHEE AND OTHERS	174
DUNDEE HARBOUR BILL, 1892 (H.L.).	
<i>Petition of</i> (1) THE HARBOUR TRUSTEES OF ABERBROTHWICK	178
„ (2) THE PROVOST, MAGISTRATES, AND TOWN COUNCIL OF ABERBROTHWICK, OR ARBROATH, AS SUCH, AND AS CREDITORS OF THE HARBOUR TRUSTEES OF ABERBROTHWICK, AND OF THE PERSONS HERETO SUBSCRIBING BEING ALSO CREDITORS OF THE SAID TRUSTEES ..	178
DUNDEE SUBURBAN RAILWAY (EXTENSION OF TIME) BILL, 1894 (H.L.).	
<i>Petition of</i> THE PAROCHIAL BOARD OF THE DUNDEE COMBINATION	330
EAST GRINSTEAD GAS AND WATER BILL, 1892.	
<i>Petition of</i> OWNERS, LESSEES AND OCCUPIERS IN THE DISTRICT OF FOREST ROW, IN THE PARISH OF EAST GRINSTEAD	181
EAST STONEHOUSE WATER BILL, 1893.	
<i>Petition of</i> (1) THE DEVONPORT WATER COMPANY	246
„ (2) THE CORPORATION OF PLYMOUTH	248
EDINBURGH CORPORATION TRAMWAYS BILL, 1893.	
<i>Petition of</i> (1) THE EDINBURGH STREET TRAMWAYS COMPANY	250
„ (2) THE COUNTY COUNCIL OF MIDLOTHIAN	254
„ (3) THE CALEDONIAN RAILWAY COMPANY	256

	PAGE
EDINBURGH IMPROVEMENT BILL, 1893.	
<i>Petition of THE NATIONAL TELEPHONE COMPANY</i>	259
EDINBURGH MUNICIPAL AND POLICE BILL, 1891.	
<i>Petition of (1) THE PAROCHIAL BOARD OF ST. CUTHBERT'S COMMINATION, EDINBURGH, AND ANDREW FERRIER, INSPECTOR OF POOR, FOR AND ON BEHALF OF THE SAID COMMINATION</i>	91
,, (2) THE PAROCHIAL BOARD OF THE CITY PARISH OF EDINBURGH	91
,, (3) THE SCHOOL BOARD OF EDINBURGH	96
,, (4) THE EDINBURGH STREET TRAMWAYS COMPANY	98
,, (5) THE CORPORATION OF LEITH	99
,, (6) THE EDINBURGH AND LEITH HERITABLE PROPERTY ASSOCIATION, THE EDINBURGH AND LEITH MASTER BUILDERS' ASSOCIATION, THE EDINBURGH AND LEITH HOUSE FACTORS' ASSOCIATION, AND OF INDIVIDUAL OWNERS OF PROPERTY, RATEPAYERS AND OTHERS IN THE CITY OF EDINBURGH	99
EDINBURGH STREET TRAMWAYS BILL, 1892 (H.L.).	
<i>Petition of THE LORD PROVOST, MAGISTRATES, AND COUNCIL OF THE CITY OF EDINBURGH</i>	184
EDINBURGH STREET TRAMWAYS BILL, 1893.	
<i>Petition of (1) THE EDINBURGH AND DISTRICT WATER TRUST</i>	262
,, (2) THE EDINBURGH AND LEITH CORPORATION GAS COMMISSIONERS	262
EDINBURGH NORTH BRIDGE IMPROVEMENT BILL, 1894 (H.L.).	
<i>Petition of DONALD MACGREGOR AND OTHERS</i>	333
ELECTRIC LIGHTING PROVISIONAL ORDERS (No. 11) CONFIRMATION BILL (CHATHAM, ROCHESTER, AND DISTRICT, ELECTRIC LIGHTING ORDER), 1890.	
<i>Petition of WALTER RICHARD SOLMAN</i>	26
FISHGUARD BAY RAILWAY AND PIER BILL, 1893 (H.L.).	
<i>Petition of JAMES OKELL</i>	264
FLEETWOOD IMPROVEMENT BILL, 1893.	
<i>Petition of RICHARD EDMONDSON</i>	266
FOLKESTONE PIER AND LIFT BILL, 1890.	
<i>Petition of RICHARD HAMMERSLEY HEENAN</i>	28
FOLKESTONE, SANDGATE, AND HYTHE TRAMWAYS BILL, 1891.	
<i>Petition of THE SOUTH OF ENGLAND TELEPHONE COMPANY, LIMITED</i>	102
FORFAR AND BRECHIN RAILWAY BILL, 1891.	
<i>Petition of (1) THE PROVOST, MAGISTRATES AND TOWN COUNCIL OF FORFAR, THE EARL OF STRATHMORE, JAMES TAYLOR, AND MANUFACTURERS AND TRADERS IN FORFAR</i>	104
,, (2) THE CALEDONIAN RAILWAY COMPANY	108
GARVE AND ULLAPPOOL RAILWAY BILL, 1890.	
<i>Petition of THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY</i>	30
GLASGOW AND SOUTH-WESTERN RAILWAY (STEAM-VESSELS) BILL, 1891 (H.L.).	
<i>Petition of (1) THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY</i>	111
,, (2) THE CALEDONIAN RAILWAY COMPANY	111
,, (3) THE CLYDE STEAMSHIP OWNERS' ASSOCIATION AND OTHERS	115
GLASGOW AND SOUTH-WESTERN RAILWAY BILL, 1892 (H.L.).	
<i>Petition of THE PROVOST, MAGISTRATES AND COUNCIL OF THE ROYAL BURGH OF IRVINE</i>	187
GLASGOW AND SOUTH-WESTERN RAILWAY (No. 2) BILL, 1892.	
<i>Petition of THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY AND THE ARDROSSAN HARBOUR COMPANY</i>	190

	PAGE
GLASGOW CORPORATION BILL, 1890.	
<i>Petition of</i> THE PARTICK, HILLHEAD AND MARYHILL GAS COMPANY, LIMITED	31
GLASGOW CORPORATION WATER BILL, 1892.	
<i>Petition of</i> THE CALEDONIAN RAILWAY COMPANY	191
GLASGOW SOUTH SUBURBAN RAILWAY BILL, 1891	117
GLASGOW, YOKER AND CLYDERANK RAILWAY BILL, 1892.	
<i>Petition of</i> (1) THE LANARKSHIRE AND DUMBERTONSHIRE RAILWAY COMPANY	191
,, (2) THE CALEDONIAN RAILWAY COMPANY	191
,, (3) THE MAGISTRATES AND POLICE COMMISSIONERS OF THE BURGH OF CLYDEBANK	193
GLASGOW, YOKER AND CLYDEBANK RAILWAY BILL, 1893.	
<i>Petition of</i> THE CORPORATION OF GLASGOW	269
GREAT NORTH OF SCOTLAND RAILWAY BILL, 1890.	
<i>Petition of</i> (1) OWNERS, &C, IN THE VICINITY OF ELOIN	34
,, (2) JAMES SIMPSON	34
,, (3) THE CORPORATION OF INVERNESS	34
GREAT NORTH OF SCOTLAND RAILWAY BILL, 1893.	
<i>Petition of</i> THE CORPORATION OF ABERDEEN	269
GREAT WESTERN RAILWAY BILL, 1891.	
<i>Petition of</i> (1) THE TAFF VALE RAILWAY COMPANY	117
,, (2) THE BARRY DOCKS AND RAILWAY COMPANY	120
GREAT WESTERN AND MIDLAND RAILWAY COMPANIES BILL, 1894 (H.L.).	
<i>Petition of</i> THE LONDON AND NORTH-WESTERN RAILWAY COMPANY	334
GREENOCK CORPORATION BILL, 1893.	
<i>Petition of</i> (1) THE CLYDE NAVIGATION TRUSTEES	270
,, (2) THE CORPORATION OF GLASGOW	270
HANDSWORTH (STAFFORD) RECTORY BILL, 1891 (H.L.).	
<i>Petition of</i> INHABITANTS AND CHURCHWARDENS OF HOLY TRINITY, HANDSWORTH ..	123
HIGHLAND RAILWAY (NEW LINES) BILL, 1890.	
<i>Petition of</i> WILLIAM YOUNG	35
HORNSEY LOCAL BOARD BILL, 1893.	
<i>Petition of</i> (1) OWNERS AND LESSEES OF LANDS, &C., IN THE URBAN SANITARY DISTRICT OF HORNSEY, IN THE COUNTY OF MIDDLESEX	276
,, (2) THE LONDON COUNTY COUNCIL	278
KENILWORTH CORPORATION BILL, 1891.	
<i>Petition of</i> THE LOCAL BOARD OF HEALTH FOR THE DISTRICT OF HAMWORTH, IN THE COUNTY OF YORK	125
LANCASHIRE AND DUMBERTONSHIRE RAILWAY BILL, 1890.	
<i>Petition of</i> THE WEST HIGHLAND RAILWAY COMPANY	36
LANCASHIRE, DERRYSHIRE AND EAST COAST RAILWAY BILL, 1891.	
<i>Petition of</i> JOHN PRESTWICH	127
LANCASHIRE AND YORKSHIRE AND LONDON AND NORTH-WESTERN RAILWAYS (STEAM-VESSELS) BILL, 1892.	
<i>Petition of</i> (1) THE BELFAST STEAMSHIP COMPANY	195
,, (2) THE GLASGOW, DUBLIN AND LONDONDERRY STEAM PACKET COMPANY..	195
LANCASHIRE AND YORKSHIRE RAILWAY (STEAM-VESSELS) BILL, 1892.	
<i>Petition of</i> (1) THE CITY OF DUBLIN STEAM PACKET COMPANY	197
,, (2) THE GLASGOW, DUBLIN, AND LONDONDERRY STEAM PACKET COMPANY	197
,, (3) THE STEAMSHIP OWNERS' ASSOCIATION AND THE IRISH STEAMSHIP ASSOCIATION	199

	PAGE
LANCASHIRE AND YORKSHIRE RAILWAY BILL, 1894.	
<i>Petition of</i> (1) THE CORPORATION OF SALFORD	337
,, (2) J. B. HODOKINSON AND J. LINDLEY	339
LEA VALLEY DRAINAGE BILL, 1892.	
<i>Petition of</i> THE LONDON COUNTY COUNCIL	202
LEEDS CORPORATION (CONSOLIDATION AND IMPROVEMENT) BILL, 1893 [H.L.]	
<i>Petition of</i> THE NATIONAL TELEPHONE COMPANY	281
LOCAL GOVERNMENT PROVISIONAL ORDER (FOR THE FORMATION OF THE EDMONTON, ENFIELD, SOUTH HORNSEY AND TOTTENHAM JOINT HOSPITAL DISTRICT) CONFIRMATION BILL, 1891.	
<i>Petition of</i> (1) THE SOUTHGATE LOCAL BOARD	127
,, (2) THOMAS JAMES MANN AND OTHERS	127
LOCAL GOVERNMENT PROVISIONAL ORDER No. 10 (HALIFAX ORDER) CONFIRMATION BILL, 1892.	
<i>Petition of</i> THE CORPORATION OF BRADFORD	204
LONDON, CHATHAM AND DOVER RAILWAY BILL, 1894.	
<i>Petition of</i> THE CORPORATION OF FOLKESTONE	341
LONDON AND NORTH-WESTERN RAILWAY BILL, 1893.	
<i>Petition of</i> THE SALT UNION, LIMITED	284
LONDON AND SOUTH-WESTERN RAILWAY BILL, 1890.	
<i>Petition of</i> THE POOLE BRIDGE COMPANY	36
LONDON AND SOUTH-WESTERN RAILWAY BILL, 1893.	
<i>Petition of</i> RATEPAYERS OF SOUTHAMPTON	287
LONDON, BRIGHTON, AND SOUTH COAST RAILWAY (VARIOUS POWERS) BILL, 1890 (H.L.).	
<i>Petition of</i> WILLIAM DUKE AND OTHERS	39
LONDON COUNTY COUNCIL (GENERAL POWERS) BILL, 1891.	
<i>Petition of</i> THE BRUSH ELECTRICAL ENGINEERING COMPANY AND SIX OTHER ELECTRICAL LIGHTING COMPANIES	130
LONDON COUNTY COUNCIL (GENERAL POWERS) BILL, 1892.	
<i>Petition of</i> THE GAS LIGHT AND COKE COMPANY.. .. .	204
LONDON COUNTY COUNCIL (MONEY) BILL, 1892.	
<i>Petition of</i> THE CORPORATION OF WEST HAM	208
LONDON COUNTY COUNCIL (SUBWAYS) BILL, 1892.	
<i>Petition of</i> THE BOARD OF WORKS FOR THE ST. GILES'S DISTRICT	210
LONDON COUNTY COUNCIL (GENERAL POWERS) BILL, 1893.	
<i>Petition of</i> (1) THE GOVERNOUR AND COMPANY OF THE NEW RIVER, BROUGHT FROM CHADWELL AND AMWELL TO LONDON; THE EAST LONDON WATERWORKS COMPANY; THE COMPANY OF PROPRIETORS OF LAMBETH WATERWORKS; THE COMPANY OF PROPRIETORS OF THE WEST MIDDLESEX WATERWORKS; THE GRAND JUNCTION WATERWORKS COMPANY; THE GOVERNOUR AND COMPANY OF THE CHELSEA WATERWORKS; AND THE SOUTHWARK AND VAUXHALL WATER COMPANY.. .. .	290
,, (2) THE EAST LONDON WATERWORKS COMPANY	290
,, (3) THE KENT WATERWORKS COMPANY	290
,, (4) THE CORPORATION OF WEST HAM AND OTHER LOCAL AUTHORITIES.. .. .	295
,, (5) THE ESSEX COUNTY COUNCIL	295
,, (6) THE BERKSHIRE COUNTY COUNCIL	295
,, (7) THE SURREY COUNTY COUNCIL	295
,, (8) THE UPPER THAMES ASSOCIATION	298
,, (9) THE THAMES RIPARIAN OWNERS' ASSOCIATION, AND SIR GILBERT CLAYTON EAST, BART.. .. .	298
,, (10) THE MAYOR, ALDERMEN, AND COMMONS OF THE CITY OF LONDON	300
,, (11) THE COMMISSIONERS OF SEWERS OF THE CITY OF LONDON	303
LONDON OPEN SPACES BILL, 1893.	
<i>Petition of</i> THE GAS LIGHT AND COKE COMPANY	305

	PAOE
LONDON STREETS (REMOVAL OF GATES, &c.) BILL, 1893.	
<i>Petition of</i> THE GAS LIGHT AND COKE COMPANY	307
MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (EXTENSION TO LONDON, &c.) BILL, 1891.	
<i>Petition of</i> (1) VISCOUNT PORTMAN	130
" (2) OWNERS, LESSEES, AND OCCUPIERS OF LANDS, HOUSES AND PROPERTY IN THE PARISHES OF ST. MARYLEBONE AND ST. JOHN, HAMPSTEAD ..	133
" (3) JOHN WOOLEY PITT AND THOMAS JOHN PITTFIELD AND OTHERS ..	133
" (4) OWNERS, LESSEES, AND OCCUPIERS IN BROADHURST GARDENS, IN THE PARISH OF ST. JOHN, HAMPSTEAD	136
" (5) GEORGE BOULTRY AND OTHERS, OWNERS, &c., OF PROPERTY IN NOTTINGHAM	139
" (6) THE VICAR AND CHURCHWARDENS OF THE PARISH CHURCH OF ST. MARY, LEICESTER	139
" (7) THE TOWCESTER AND BUCKINGHAM RAILWAY COMPANY	140
MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (EXTENSION TO LONDON, &c.) BILL, 1892.	
<i>Petition of</i> W. G. CHAPMAN AND COMPANY	212
MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY (VARIOUS POWERS) BILL, 1891.	
<i>Petition of</i> THE GREAT WESTERN RAILWAY COMPANY	140
MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY BILL, 1894.	
<i>Petition of</i> THE VESTRY OF THE PARISH OF ST. MARYLEBONE	341
METROPOLITAN RAILWAY BILL, 1890.	
<i>Petition of</i> (1) THE VESTRY OF MARYLEBONE	40
" (2) THE VESTRY OF ST. PANCRAS	40
" (3) THE VISCOUNT PORTMAN	43
" (4) THE REVEREND H. S. EYRE	44
" (5) THE LONDON, BRIGHTON AND SOUTH COAST RAILWAY COMPANY ..	46
" (6) THE GREAT EASTERN RAILWAY COMPANY	46
" (7) THE MIDLAND RAILWAY COMPANY	46
" (8) THE GREAT NORTHERN RAILWAY COMPANY	46
" (9) THE LONDON, CHATHAM AND DOVER RAILWAY COMPANY	46
" (10) THE GREAT WESTERN RAILWAY COMPANY	46
" (11) THE METROPOLITAN DISTRICT RAILWAY COMPANY	49
MIDLAND RAILWAY BILL, 1892.	
<i>Petition of</i> JAMES ADDY	213
NELSON CORPORATION BILL, 1891.	
<i>Petition of</i> (1) JOHN BARROWCLOUGH	144
" (2) MESSRS. HENRY HARTLEY AND SONS	147
" (3) OWNERS AND OCCUPIERS OF MILLS ON THE RIVER CALDER	147
" (4) PADDIHAM AND HAPTON LOCAL BOARD	147
" (5) THE CORPORATION OF BURNLEY	147
NEWCASTLE-UPON-TYNE IMPROVEMENT BILL, 1892.	
<i>Petition of</i> THE WALKER LOCAL BOARD	215
NORTH BRITISH AND GLASGOW AND SOUTH-WESTERN RAILWAY COMPANIES BILL, 1890.	
<i>Petition of</i> (1) SHARP, STEWART AND COMPANY	50
" (2) WAREHOUSEMEN IN GLASGOW	50
" (3) THE LANARKSHIRE AND Ayrshire RAILWAY COMPANY	53
" (4) THE SOLWAY JUNCTION RAILWAY COMPANY	53
NORTH BRITISH RAILWAY BILL, 1891.	
<i>Petition of</i> PROPRIETORS, FEUERS, &c., IN DUNDYVAN ROAD, COATBRIDGE	151
NORTH-EASTERN RAILWAY (HULL DOCKS) BILL, 1892 (H.L.).	
<i>Petition of</i> (1) THE SOUTH YORKSHIRE COAL OWNERS' ASSURANCE SOCIETY	217
" (2) OWNERS OF WHARVES AND WAREHOUSES, AND OTHERS, AT KINGSTON- UPON-HULL	217

	PAGE
NORTH-EASTERN RAILWAY BILL, 1892.	
<i>Petition of THE SOUTH YORKSHIRE COAL OWNERS' ASSURANCE SOCIETY</i>	217
NORTH-EASTERN RAILWAY BILL, 1894.	
<i>Petition of THE CORPORATION OF WEST HARTLEPOOL</i>	344
PARTICK, HILLHEAD AND MARYHILL GAS AND ELECTRICITY BILL, 1890.	
<i>Petition of COMMITTEE OF RATEPAYERS, GAS CONSUMERS, AND FEUARS IN KELVINSIDE AND OTHERS</i>	53
PIER AND HARBOUR PROVISIONAL ORDERS CONFIRMATION (No. 3) BILL, 1894 (LOCH EFORT ORDER).	
<i>Petition of (1) THE CLYDE STEAMSHIP OWNERS' ASSOCIATION AND JOHN MCCALLUM AND COMPANY; AND (2) THE INVERNESS COUNTY COUNCIL</i>	346
PONTYPRIDD BURIAL BOARD BILL, 1892.	
<i>Petition of RATEPAYERS AND OTHERS WITHIN THE DISTRICT AFFECTED BY THE BILL</i> ..	221
REGENT'S CANAL, CITY AND DOCKS RAILWAY BILL, 1892.	
<i>Petition of (1) THE CORPORATION OF WEST HAM</i>	224
" (2) THE VESTRY OF ST. PANCRAS	227
RHONDDA AND SWANSEA BAY RAILWAY BILL, 1893 (H.L.).	
<i>Petition of THE GREAT WESTERN RAILWAY COMPANY</i>	309
RIBBLE NAVIGATION BILL, 1890.	
<i>Petition of THE CORPORATION OF SOUTHPORT</i>	56
RICHMOND FOOTBRIDGE (LOCK, &C.) BILL, 1890.	
<i>Petition of (1) THE VESTRY OF HAMMERSMITH</i>	60
" (2) THE BOARD OF WORKS FOR THE WANDSWORTH DISTRICT	60
" (3) THE CHISWICK LOCAL BOARD	60
" (4) INHABITANTS AND RATEPAYERS OF MORTLAKE AND RIPARIAN OWNERS ..	60
" (5) THE DUKE OF DEVONSHIRE	60
ROTHERHAM, BLYTH, AND SUTTON RAILWAY BILL, 1891.	
<i>Petition of THE MANCHESTER, SHEFFIELD, AND LINCOLNSHIRE RAILWAY COMPANY</i> ..	152
RHYMNEY RAILWAY BILL, 1890 (H.L.).	
<i>Petition of (1) THE BARRY DOCK AND RAILWAYS COMPANY</i>	64
" (2) THE TAFF VALE RAILWAY COMPANY	64
" (3) THE PONTYPRIDD, CAERPHILLY, AND NEWPORT RAILWAY COMPANY ..	67
" (4) THE MARQUESS OF BUTE AND THE TRUSTEES OF THE WILL OF THE LATE MARQUESS OF BUTE	67
ST. ANDREWS LINKS BILL, 1894.	
<i>Petition of INHABITANTS, OWNERS, RATEPAYERS AND OTHERS IN THE BURGH OF ST. ANDREWS</i>	349
SAINT BARNABAS CHURCH, LIVERPOOL, BILL, 1892 (H.L.).	
<i>Petition of INHABITANTS OF THE ECCLESIASTICAL DISTRICT OF ST. BARNABAS</i>	229
SHEFFIELD AND MIDLAND RAILWAY COMPANIES' COMMITTEE BILL, 1891.	
<i>Petition of (1) THE SHEFFIELD AND SOUTH YORKSHIRE NAVIGATION COMPANY</i> ..	153
" (2) THE GREAT NORTHERN RAILWAY COMPANY	155
SOUTH-EASTERN RAILWAY BILL, 1890 (H.L.).	
<i>Petition of THE OVERSEERS OF THE POOR FOR THE PARISH OF ST. SAVIOUR'S, SOUTHWARK</i>	68
SOUTH-EASTERN RAILWAY BILL, 1891.	
<i>Petition of THE LONDON, CHATHAM, AND DOVER RAILWAY COMPANY</i>	157
SOUTH-EASTERN RAILWAY BILL, 1893.	
<i>Petition of THE VESTRY OF BERMONDSEY</i>	310

	PAGE
SOUTH YORKSHIRE JUNCTION RAILWAY BILL, 1890.	
<i>Petition of THE NORTH-EASTERN RAILWAY COMPANY</i>	69
STOURBRIDGE IMPROVEMENT COMMISSIONERS BILL, 1891.	
<i>Petition of THE STOURBRIDGE GAS COMPANY</i>	159
SWINTON AND PENDLEBURY LOCAL BOARD BILL, 1892.	
<i>Petition of</i> (1) <i>THE CORPORATION OF SALFORD</i>	231
„ (2) <i>THE LOCAL BOARD OF LITTLE HULTON</i>	233
TOTTENHAM AND FOREST GATE JUNCTION RAILWAY BILL, 1890.	
<i>Petition of</i> (1) <i>OWNERS, LESSEES AND OCCUPIERS, ALONG THE LINE OF THE PROPOSED RAILWAY</i>	71
„ (2) <i>INHABITANTS OF LEYTON, WANSTEAD, AND WEST HAM</i>	72
TRAMWAYS PROVISIONAL ORDERS CONFIRMATION BILL (No. 2) (BRISTOL TRAMWAYS EXTENSION ORDER), 1891.	
<i>Petition of THE BRISTOL WATERWORKS COMPANY</i>	160
TRAMWAYS ORDER CONFIRMATION (SOMERTON, KEINTON-MANDEVILLE, AND CASTLE CARY TRAMWAYS ORDER) (No. 2) BILL, 1893 (H.L.).	
<i>Petition of J. HUNTLEY THRING</i>	310
WEAR VALLEY EXTENSION RAILWAY BILL, 1892 (H.L.).	
<i>Petition of THE CUMBERLAND COUNTY COUNCIL</i>	234
WEAVER NAVIGATION BILL, 1893.	
<i>Petition of BRUNNER, MOND AND CO.</i>	312
WEST HIGHLAND RAILWAY (MALLAIG EXTENSION) BILL, 1894.	
<i>Petition of THE CALLANDER AND OBAN RAILWAY COMPANY AND THE CALEDONIAN RAILWAY COMPANY</i>	353
WEST RIDING RIVERS CONSERVANCY BILL, 1894.	
<i>Petition of</i> (1) <i>THE MORLEY CHAMBER OF COMMERCE; (2) THE WAKEFIELD INCORPORATED CHAMBER OF COMMERCE AND SHIPPING</i>	356
WESTERN VALLEYS (MONMOUTHSHIRE) WATER BILL, 1891.	
<i>Petition of</i> (1) <i>THE MONMOUTHSHIRE COUNTY COUNCIL</i>	161
„ (2) <i>THE VICAR AND CHURCHWARDENS OF THE PARISH OF MYNYDDISLWYN</i>	163
„ (3) <i>THE BLACKWOOD GAS AND WATER COMPANY, LIMITED</i>	164
WHITLAND, CRONWARE AND PENDINE RAILWAY (ABANDONMENT) BILL, 1892.	
<i>Petition of THOMAS JOHN BROWICK</i>	236
WORCESTER AND BROOM RAILWAY (EXTENSION OF TIME) BILL, 1890.	
<i>Petition of THE STRATFORD-ON-AVON, TOWCESTER AND MIDLAND JUNCTION RAILWAY COMPANY</i>	75

INDEX TO SUBJECTS,

TO CASES REPORTED IN THIS VOLUME.

(SESSIONS 1890-1894 INCLUSIVE).

. Where a Standing Order is referred to in the Index, the numbering is that of the Standing Orders for 1895.

ABANDONMENT (*See* RAILWAY (1)).

ABSTRACTION (*See* GAS, RAILWAY (4), TRAFFIC, WATER).

ACCESS (*See also* OBSTRUCTION, ROAD),

—— to harbour interfered with by railway bridge, 20

—— to ferry interfered with by level crossing, 23

direct —— to town, by construction of railway, opposed by owners of toll bridge, 36

interference with —— by construction of line in front of petitioners' property, 136

—— to church interfered with by railway, 139

loss of —— occasioned by closing of level crossing, 151

bill prohibiting interference with —— to subways of county council, opposed by local board as road authority, 210

interference with —— to docks by construction of tramways, 215

partial interference with ——, when sufficient to confer a *locus standi*, 212, 215

interference with —— to docks by construction of competing dock, 318

ACTS, PUBLIC (*See* STATUTES).

ADVOWSON,

transfer of —— and re-endowment of rectory opposed by inhabitants and churchwardens of ecclesiastical district formed from parish, 123

AGREEMENT (*See also* RAILWAY (3), TRAMWAY),

how far intention of —— considered, 1

—— as to clause in first House, how far excluding *locus* in second House, 39

alleged fraud in obtaining —— to supersede protective clause, 144

—— of railway company with road authority, not confirmed by bill, how affecting *locus*, 151

alleged violation of —— by power in bill to subscribe to pier, 157

—— not to oppose, how far binding when bill altered in first House, 231

—— relating to royalties at docks affected by construction of competing dock, 318

alleged —— by promoters in previous session to construct proposed railway as ground of *locus* of corporation, 344

ALLEGATION (*See* PETITION, PRACTICE).

AMALGAMATION (*See* RAILWAY (2), TRAMWAY).

AMBIGUITY (*See* PRACTICE).

- AMENITY** (*See also* OWNERS),
loss of — of residential neighbourhood by construction of railway and
erection of terminal station, 134, 136
- ANCHORAGE** (*See* HARBOUR).
- APPEAL**
— to Board of Trade, as to bye-laws dealing with navigation, provided for
in bill, 77
alleged right of — under general law, affected by bill, 174
- APPROACH** (*See* ACCESS).
- AQUEDUCT** (*See* RESERVOIR, WATER).
- AREA** (*See also* GAS, RATES, WATER),
lessening the — over which taxes can be levied, opposed by parochial
board, 91
construction of railway across catchment — of reservoir opposed by
corporation supplying water to their district, 187
- ASSOCIATION** (*See also* STEAMSHIP OWNERS, TRADE),
voluntary — for election of river conservators opposing proposed alterations
in constitution of conservancy board, 298
- AUTHORITY** (*See* HARBOUR, LOCAL BOARD, SANITARY AUTHORITY).
- BARGE OWNERS**,
— opposing introduction of large vessels on canal, on ground of com-
petition and danger, 77
- BILL** (*See* PRACTICE).
- BOARD OF TRADE**,
control of works authorised by previous Acts, imposed by bill on —, 56
appeal to —, as to provisions in bill relating to bye-laws as to
navigation, 77
corporation seeking powers to purchase tramways by agreement, and to
work and lease same to third parties, by bill containing no provision for
approval of lease by —, 250
- BOARD OF WORKS** (*See* LOCAL BOARD).
- BONDS**,
petitioner holder of — and also a creditor, complaining of alteration of
status by bill, 28
- BOROUGH** (*See* CORPORATION).
- BRANCH** (*See* RAILWAY (3)).
- BREACH OF FAITH** (*See also* AGREEMENT, PRACTICE),
— alleged by corporation against railway company seeking to abandon
authorised line and to substitute another, 104
question of — not entertained by Court, 191
- BRIDGE**,
interference by railway — with access to harbour, 20
abstraction of traffic by railway — from road bridge, 23
owners of toll — opposing railway giving direct access to town, 36
construction of — and weir with removable sluices opposed by local
authorities, 60
construction of — by county council, opposed by gas company claiming a
landowner's locus for interference with pipes, 204
widening of railway by construction of — over road, interfering with
light and air, 213
injurious affecting of district by delay in reconstruction of —, 227
provisions for works for electrical power on tramway carried over railway
—, opposed by railway company apprehending injury, 256
gas company with pipes across — opposing carrying of water-mains
over same, 324

- BURGH** (*See also* CORPORATION),
 extension of — and application of Acts relating to existing burgh to added area, opposed by traders, 174
 town council of Royal — in Scotland claiming to represent trade, 178
 communication between different parts of — affected by construction of railways, 193
- BURIAL BOARD,**
 constitution of — opposed by ratepayers and individual inhabitants within district affected by bill, 221
- CANAL,**
 construction of — to form junction between existing canals, opposed by barge-owners, 77
 extension of time bill for construction of railway and — opposed by local authority as delaying reconstruction of bridge provided for in the original Act, 227
 diversion of water from — into dock opposed by riparian owners, 313
- CAPITAL,**
 proposed repeal of clause as to share — in previous Act, opposed by secured creditor, 28
 tramway bill for additional — opposed by corporation as future purchasers of tramways, 184
- CARRIERS** (*See* RAILWAY (3)).
- CATTLE,**
 provision in burgh improvement bill for — depôt, opposed by navigation trustees and corporation alleging competition, 270
- CHAMBERS OF COMMERCE,**
 claim of — to represent traders, 356
- CHURCH,**
 injury to — by disturbance and vibration owing to propinquity of railway, 139
 bill for sale and removal of — opposed by inhabitants of ecclesiastical district with authority of churchwardens, 229
- CHURCHWARDENS** (*See also* VICAR),
 — and inhabitants of ecclesiastical district formed from parish, opposing transfer of advowson and re-endowment of rectory, 123
- CLAUSE** (*See* PRACTICE, SAVING CLAUSES).
- COLLIERY,**
 lessees of — as riparian owners apprehending danger from enlargement of reservoir, 320
- COMMISSIONERS** (*See* HARBOUR BOARD, NAVIGATION, ETC.).
- COMPANY** (*See* DOCK, GAS, RAILWAY (3), ETC.).
- COMPENSATION** (*See* WATER).
- COMPETITION** (*See also* CORPORATION, DOCK, GAS, RAILWAY (4)),
 amalgamation of tramways and use of electricity thereon, how far an improvement of existing —, 242
 improvement of existing —, by bill for additional water works, opposed by company supplying district, 246
 pier owner opposing establishment of ferry and powers to owners of boats to use landing stage, on ground of —, 266
 establishment of cattle depôt in burgh improvement bill, opposed by navigation trustees and corporation alleging —, 270
- COMMONERS,**
 individual — claiming landowner's *locus* in respect of interference with common lands by railway, 328

CONSERVANCY (*See also* NAVIGATION),

- board, how far representing the interests of riparian owners, 60
- county council, represented on — board, claiming representation on Drainage commission, 202
- alteration of constitution of — board, by London County Council, opposed by water companies, 290; by county councils and corporation, 295
- proposed alterations in constitution of — board, opposed by voluntary association for election of conservators, 298
- river — bill, opposed by chamber of commerce claiming to represent traders, 356

CONSTRUCTION OF ACT (*See* PRACTICE).CONSUMERS (*See* GAS, WATER).CONTRACT (*See* AGREEMENT).

CORPORATION, MUNICIPAL,

- promoting simultaneous bills for electricity and extension of borough, opposed by company promoting bill to supply electricity, in respect of both bills, 31
- opposing construction of a competing railway, on ground of injury to trade interests, 34
- of Scotch burghs how far representing traders also petitioning, 50
- distinction between — of English and Scotch burghs, 50
- promoting bill for additional capital for deep water channel already authorised, opposed by neighbouring — alleging injury to tidal flow, 56
- of Scotch burgh alleging injury to town by conversion of local into through line, 104
- purchase of and power to work electrical tramway by —, opposed by telephone company claiming protective clauses, 167
- promoting bill for additional water works, opposed by local board of district supplied by promoters, 169
- of Royal burgh, claiming to represent trade, in opposing harbour bill, 178.
- opposing tramway bill conferring powers of agreement with local authorities as to mechanical power, purchase and lease of tramways, &c., on tramway company, 184
- construction of railway across catchment area of reservoir of — supplying water to district, 187
- opposition of — to bill of London County Council allocating sums to works already authorised, 208
- construction of tramways by — partly outside borough, opposed by local board of district, 215
- as landowners, having acquired land subject to notice to treat under original Act, opposing a bill for extension of time for purchase of lands, 224
- agreement by — not to oppose bill, how far binding when bill altered in first House, 231
- promotion of sewerage scheme by —, opposed by county council alleging "injurious affecting," 237
- claiming a landowner's *locus* in respect of leat crossed by pipes of water company, 248
- powers to purchase tramways by agreement, and to work and lease same to third parties sought by —, without provision in bill for approval of lease by Board of Trade, 250
- purchase of tramways by — beyond district of county council, who alleged injurious affecting of tramways within district, 254
- powers sought by — to pull down houses and interfere with overhead wires, opposed by telephone company as licensees of owners and occupiers of houses, 259
- railway company seeking powers to supply water within the district of supply of —, 269
- bill of — for burgh improvement providing for prevention of smoke nuisance within burgh and port, opposed by navigation trustees and neighbouring corporation, 270
- burgh improvement bill of — providing for establishment of cattle depôt, opposed by navigation trustees and corporation, alleging competition, 270
- consolidation bill enabling — to work tramways, already worked by electricity, opposed by telephone company, 281

CORPORATION, MUNICIPAL—*Continued.*

- opposing bill for extension of time for construction and for partial abandonment of authorised railway, 337
- opposing bill as not imposing obligation on promoters to construct railway, 344

COUNTY COUNCIL,

- claiming general *locus* against water bill, how far local authority under S. O. 134A, 160
- rights of — under Rivers Pollution Prevention Act, 1876, 160
- London —, apprehending injury to river inside county, opposing drainage bill where drainage area and proposed works outside county, 202
- London — claiming representation on Drainage commission, 202
- construction of bridge by London — opposed by gas company having pipes in streets within limits of deviation, and claiming to be heard as land-owners, 204
- London — seeking to impose improvement ("Betterment") rate opposed by ratepayers, 204
- money bill of —, allocating sums to works already authorised, opposed by corporation, 208
- subways bill of — opposed by board of works as road authority, 210
- seeking to compel promoters of railway outside county to extend same into county, 234
- purchase of tramways by corporation beyond district of —, alleged to injuriously affect tramways within district, 254
- local authority seeking special powers as to local government, opposed by London —, claiming uniformity of legislation, and alleging possibility of main sewerage system being affected, 278
- alteration of conservancy board by London —, opposed by water companies, 290, by county councils and corporation, 295
- corporation as market authority opposing bill of London — authorising expenditure of county rate on inquiries as to water supply and markets, 300
- power to regulate erection of dwelling-houses on low-lying lands by —, opposed by commissioners of sewers, 308
- acquisition of private garden by London — for public recreation ground, opposed by gas company alleging interference with mains in street, 305
- bill of London — for removal of gates and obstructions from streets, opposed by gas company, 307
- opposing imposition of harbour rates within sea loch hitherto forming free anchorage, 346

COURT OF REFEREES (*See PRACTICE*).

CREDITORS (*See also MORTGAGEES*),

- secured — opposing repeal of clauses as to capital in previous Act, 28
- and mortgagees of harbour rates opposing reduction of same by bill, 178
- landowners having received notice to treat, how far — of railway company, 330

CROSSING (*See LEVEL CROSSING, RAILWAY (3)*).

COVENANT,

- salt union having restrictive — with owners, claiming an interest in lands sought to be acquired for railway sidings, 284

DESCRIPTION (*See PRACTICE*).

DEVIATION (*See LIMITS OF DEVIATION*).

DISSENTIENT (*See RATEPAYER, SHAREHOLDER*).

DISTINCT INTERESTS (*See CORPORATION, OWNERS, REPRESENTATION, TRADERS*),
— of traders arising out of agreement with railway company, 50

DISTRICT (*See also GAS, LOCAL BOARD, TRAMWAY, WATER*).

- allegation that — territorially belonged to petitioners' railway as ground of competition, 67
- meaning of word "district," 72, 134

DIVERSION (*See* TOLLS, TRAFFIC, ETC.)DOCK (*See also* HARBOUR),

- and railway company seeking running powers over petitioners' railway, 1
- transfer to competing — of powers granted to railway company to construct railway, 12
- injury to competing —, by diversion of traffic, 17, 318
- railway company as owners of — opposing construction of junction, 81
- interference with access to — by construction of tramways, 215
- alleged injurious effect upon existing competition by amalgamation of — with railway, 217
- construction of — by railway company opposed by ratepayers, 287
- diversion of river water into — opposed by riparian owners and traders, 313
- clause exempting — company from liability for loss by fire, etc., opposed by traders, 313
- construction of new — opposed by owner of royalties in respect of competing docks, 318
- owner of — alleging interference of access by construction of new dock, 318

DRAINAGE

- scheme opposed by county council apprehending injury to river in their county, 202
- claim for representation by county council on — commission, 202
- London County Council, alleging possibility of main — system being affected, opposing bill of local authority, 278

EASEMENT,

- gas company having — in roads to lay pipes, claiming landowners' *locus standi*, 204
- interference with — of light and air, how far entitling to a *locus standi*, 213

ELECTRICITY (*See also* MECHANICAL POWER, TRAMWAY),

- and extension-of-borough bills opposed by promoters of electricity bill on ground of competition, 31

EVIDENCE (*See* PETITION, PRACTICE).EXTENSION (*See also* BOROUGH, CORPORATION, GAS),

- of burgh and electricity bills opposed by promoters of electric bill on ground of competition, 31
- of burgh, and application thereto of Acts relating to existing burgh, opposed by traders, 174

EXTENSION OF TIME BILL (*See also* GAS, HARBOUR, RAILWAY (3), TRAMWAY),

- for construction of railways, but not for compulsory taking of lands, 17
- railways, petitioning railway company claiming *locus* to obtain clause to interpret existing Act, 75
- railway company claiming general *locus* against — on account of railway crossing their land, 117
- for construction of waterworks opposed by local board of neighbouring district, claiming water-shed appropriated by promoters under previous Acts, 125
- for purchase of lands opposed by corporation as landowners, they having acquired land since the original Act conferring compulsory powers, 224
- for construction of railway and canal opposed by local authority as delaying reconstruction of bridge provided for in original Act, 227
- opposed by Scotch parochial boards as landowners under notice to treat, 330
- also providing for partial abandonment of authorised railway, opposed by corporation of borough, 337

FACILITIES (*See also* RAILWAY (3), TRAFFIC),

- loss of present — to town at present on main line, apprehended by corporation of burgh, 104

FARES (*See* RATES).

FERRY,

- invasion of — rights by railway bridge causing abstraction of traffic, 23
- interference with access to — by level crossing, 23
- establishment of — and power to owners of boats to use landing-stage, opposed by pier owner, 266

FOOTPATH,

- proposal to close — and substitute foot-bridge, opposed by residents, 39.

FORESHORE,

- alleged interference with — rights of pier-owner, by bill for establishment of ferry, 266
- sale of mudlands on — by corporation to railway company for construction of dock, opposed by ratepayers, 287
- owners of — opposing bill defining harbour limits alleging that it included their property, 339

FREIGHTERS (See TRADERS).**FRONTAGER (See also OWNERS, &c.),**

- railway company as — opposing amalgamation of tramways and use of electricity thereon, 242
- owner of houses in village as — opposing construction of steam tramway on country road, 310

GAS,

- company without statutory powers, competing with corporation as promoters of bill for electric lighting, and claiming to prohibit corporation from supplying gas within limits of company, opposed by ratepayers and consumers, 53
- rights of individual — consumers to oppose bill, 53
- company, claiming to be heard as landowners, against construction of bridge, 204
- abstraction of part of district of supply and purchase of mains used for supply of — to local board, opposed by local board, apprehending the raising of gas rate to consumers, 233
- powers to construct works for cable haulage of tramways opposed by local authorities supplying — apprehending injury to pipes, 262
- company, alleging injury to mains, opposing powers for acquisition of land by county council, 305
- company, claiming protective clauses in bill of county council for removal of gates and obstructions in streets, 307
- company claiming to be heard as landowners in respect of interference with mains laid in public road, 324

HARBOUR (See also DOCK),

- opposition by owner of competing — to proposal of railway company to subsidise harbour revenues, 5
- commissioners and traders opposing construction of railway bridge interfering with access to harbour, 20
- commissioners apprehending diminution of tolls opposing construction of railway, 81
- reduction of rates at one — opposed by trustees of competing harbour, 178
- alleged extension of — limits so as to include property of landowner, as ground of *locus*, 339
- imposition of — and pier rates within sea loch, both hitherto forming free anchorage, opposed by traders and county council, 346
- construction of — in connection with railway extension, opposed by competing railway companies, 353

HAULAGE (See TRAMWAY).**HIGHWAY (See ROAD).****HOSPITAL,**

- formation of united district for — for infectious diseases opposed by sanitary authority of adjoining district alleging injurious affecting, and by owners and occupiers of adjacent property, 127

HOUSE OF LORDS (*See PRACTICE*).HOUSES (*See also OWNERS, &c.*),

- demolition of — and diminution of rates during construction of work, opposed by rating authority, 68, 341
- power to London County Council to regulate erection of — upon low-lying lands opposed by Commissioners of Sewers, 303

INCUMBENT (*See CHURCH, VICAR*).INFECTIOUS DISEASES (*See HOSPITAL*).INHABITANTS (*See also OWNERS, RATEPAYERS*),

- and traders opposing interference with access to harbour, 20
- opposing bill for bridge over navigable river on ground of injury to residential property, 60
- alleging injurious affecting, how far represented by local authorities, 72
- and churchwardens of ecclesiastical district, formed from parish, opposing transfer of advowson and re-endowment of rectory, 123
- opposing construction of terminal station as destroying residential character of district, 134
- of ecclesiastical district opposing bill for sale and removal of church, 229
- ratepayers and owners, etc., opposing acquisition of golf links by corporation of burgh, 349
- existing free privilege of — interfered with by bill of corporation imposing rate on golf players, 349

INJURIOUS AFFECTING (*See also AMENITY, LANDOWNER, OWNERS*),

- of landowners' property, by repeal of protective clause in existing Act prohibiting heavy goods traffic, 130
- of district by construction of terminal station, 134
- of telephone company by tramway propelled by electricity, 167
- of hydropathic establishment by conveyance of mineral springs and pump-room to local board, with power to sell water, 171
- of water supply of local authority, how far entitling to a *locus standi* under S. O. 134A, 169
- of town by reduction of rates at competing harbour, 178
- of district by abstraction of water by water company, 181
- of streams and surface water by construction of railway across catchment area of reservoir, 187
- general — of burgh by construction of railway, 193
- how far — must be alleged in the petition, 202
- caused by interference with access, when entitling to a *locus standi*, 212
- mere — of property, when entitling to a *locus standi*, 213
- of district alleged, by delay in reconstruction of bridge under extension of time bill, 227
- sufficiency of allegations of — by county council opposing bill of corporation for sewerage scheme, 237
- alleged — of tramways within district of county council, by purchase of tramways by corporation beyond district, 254
- telephone company alleging — by removal of overhead wires in street improvement bill of corporation, 259
- contractor of authorised railway with contingent interest therein alleging — by exercise of running powers over same, 264
- bill of local authority for special powers of local government opposed by owners and occupiers alleging — of property by increased rates, 276
- of telephone company by provisions enabling corporation to work tramways already worked by electricity, 281
- alleged — of houses in village, by construction of steam tramway on country road, 310
- of stability of gas-holders by construction of sewer, 324

INJURY (*See also INJURIOUS AFFECTING*),

- remoteness of — to owners of toll bridges by diversion of traffic, 36
- special — to traders not adequately represented by corporation, 50
- remoteness of — how far affecting the right to a *locus standi*, 60
- quantum of — how far considered, 68
- absence of substantial — to petitioners caused by railway bill, 120
- to church by disturbance and vibration caused by railway, 139

INTEREST,

- running powers sought over authorised railway opposed by contractor with a contingent — therein, 264
- salt union having restrictive covenants with owners of land sought to be acquired by railway claiming — in land, 284
- community of — of proprietors of both canal and dock as affecting riparian owners and traders, 313

JOINT OWNERS (*See* OWNERS, RAILWAY (3)).JUNCTION (*See* RAILWAY (5)).LAND (*See also* LANDOWNER, OWNERS),

- interference by formation of junction with — of railway company, 14
- same — scheduled by bills of promoters and petitioners, as ground of *locus* against making of new railway and extension of authorised railway, 120
- same — scheduled under a bill jointly promoted by petitioners and another railway company, claim to general *locus* in respect of, 152
- suppression of facts at Local Government enquiry as to —, a question for committee on bill, 224
- acquisition of — by corporation for sewerage purposes alleged to "injuriously affect" county council and neighbouring local board, 237
- acquisition of rights over and under —, how far entitling to a *locus*, 284
- acquisition of — subject to notice to treat, how affecting owner's *locus* against extension of time railway bill, 330

LANDING PLACE (*See* PIER).LANDOWNER (*See also* OWNERS),

- railway company as — claiming general *locus*, 14, 117
- not having received notice to treat, opposing bill for extension of time for constructing railway, 17
- adjacent to underground railway, injuriously affected by excavations, 44
- claiming general *locus* on ground that his land was crossed by proposed railway, 67
- petitioners served with notice as — not alleging that their lands were taken by bill, 87
- associations and individual — opposing additional taxation for police and sanitary improvements, 100
- railway company as — claiming general *locus*, and opposing extension of time for railway crossing petitioners' land, 117
- claiming general *locus* against bill proposing to repeal protection clause under existing Act prohibiting heavy goods traffic, 130
- navigation company as —, opposing bill under which lands of navigation undertaking were scheduled, 153
- corporation as — opposing construction of railway across catchment area of their reservoir, 187
- gas company claiming to be heard as — against bill for construction of bridge, 204
- locus* claimed by corporation as —, in respect of land purchased since the Act conferring compulsory powers of purchase over it, against bill for extension of time, 224
- water company as adjoining owners claiming a *locus standias* — in respect of road in which promoters sought to lay pipes, 246
- corporation claiming a *locus* as — in respect of land proposed to be crossed by pipes of water company, 248
- locus* of — claimed by gas company in respect of interference with mains laid in public road, 324
- locus* of — claimed by individual commoners in respect of interference with common land by railway, 328
- Scotch parochial board as — under notice to treat, opposing extension of time railway bill, 330
- in respect of foreshore alleging that bill defining harbour limits would include his property, 339

LEASE,

- bill of corporation to purchase tramways and to lease or work same but containing no provision for approval of — by Board of Trade, opposed by tramway company, 250

LEGAL REMEDY (*See PRACTICE*).

LEGISLATION,

- complaint against past —, a ground for disallowing *locus*, 1, 56, 91, 240
- past —, telephone companies affected by development of electrical science claiming to discuss, 102, 167
- , how far alteration of circumstances entitles petitioners to re-open, 125
- complaint against past —, where non-opposition was alleged to be owing to misapprehension, 174
- complaint against past —, by corporation opposing money bill of county council, 208
- claim for uniformity of — by London County Council when opposing bill of neighbouring local authority, 278
- past — by general Act not providing for rates subsequently authorised, how affecting *locus* of rating authority, 341

LESSEE (*See OWNERS*).

LEVEL CROSSING,

- stopping up — over railway opposed by owners, &c., 39, 151

LIGHT AND AIR (*See EASEMENT*).

LIMITS OF DEVIATION,

- special power necessary to stop up road included in —, 136
- gas company with pipes within — claiming to be heard as landowners against construction of bridge, 204

LIMIT OF DISTANCE,

- where river affected injury not — governs the case, 60

LIS PENDENS,

- how far affecting a right to *locus standi*, 144

LOCAL BOARD AND AUTHORITY (*See also CORPORATION, SANITARY AUTHORITY*),

- opposing repeal of Act prohibiting goods traffic by underground railway, 40
- how far representing inhabitants of district injuriously affected, 72
- as mortgagors of district rate as collateral security for harbour revenues, 81
- Scotch parochial boards claiming, as ratepayers, to oppose proposed exemption of public buildings from poor rates, and to discuss policy of existing exemptions, 91
- of neighbouring district, claiming watershed appropriated by promoters under previous Acts, opposing extension of time bill for construction of works, 125
- how far county councils are — under S. O. 134A, 160
- supplied with water by promoters opposing bill for additional water works, 169
- conveyance of mineral springs and pump-room to — opposed by owner and lessee and mortgagees of hydropathic establishment, 171
- tramway bill containing powers of agreement with — as to use of mechanical power, and purchase of tramways, opposed by corporation, 184
- opposition of — outside metropolis to money bill of London County Council allocating sums to works already authorised, 208
- as road authority opposing subways bill of county council, 210
- alleging interference with access to docks and consequent injury to trade, opposing construction of tramway, 215
- alleging injury to district by delay in the construction of bridge provided for in original Act, opposing extension of time bill, 227
- opposition of — to purchase of mains supplying gas to district on ground of increased rates to consumers, 233
- sufficiency of allegations of “injurious affecting” by — opposing sewerage scheme of corporation, 237
- additional works sought by — supplying water to a district also included in limits of a water company, 246
- corporation claiming landowner's *locus* as owners of leat proposed to be crossed by pipes of —, 248

LOCAL BOARD AND AUTHORITY—*Continued.*

- bill of — containing special provisions as to local government opposed by owners and occupiers within district injuriously affected by increased rates and alteration of taxation, 276
- bill of — containing special provisions as to local government opposed by London County Council claiming uniformity of legislation, 278
- of neighbouring district opposing outfall of sewer into tidal river, 327
- Scotch parochial board opposing extension of time railway bill as landowners under notice to treat, 330
- vestry as — opposing demolition of houses by railway works on account of diminution of rates, 341

LOCKS (*See WEIRS*).**LOCOMOTIVE ENGINE MANUFACTURERS**

- alleging special injury by railway amalgamation bill, arising out of the nature of their business, 50

LONDON COUNTY COUNCIL (*See COUNTY COUNCIL*).**MAINS** (*See also GAS, WATER*),

- alleged necessity for duplication of — owing to construction of tramway to be worked by cable haulage, 160
- interference with gas — opposed by gas company claiming landowners' locus, 324

MANOR (*See COMMONERS*).**MANUFACTURERS** (*See TRADERS*).**MARKET,**

- corporation as — authority opposing bill authorising expenditure of county rate upon enquiries as to water supply and markets, 300

MECHANICAL POWER (*See also TRAMWAY*),

- bill for construction of tramway to be propelled by —, including electricity, opposed by telephone company, 242

MEETING (*See PUBLIC MEETING*).**MERCHANTS** (*See TRADERS*).**MILL-OWNERS,**

- money payments to — in lieu of compensation water, 144
- below point of return of impounded water opposing bill, 147

MINERAL SPRINGS (*See SPRINGS*).**MORTGAGEES** (*See also CREDITORS*),

- of hydropathic establishment opposing conveyance to local board of mineral springs and pump-room, 171
- and creditors of harbour rates opposing reduction of same, 178

MUNICIPAL (*See CORPORATION*).**NAVIGATION** (*See also DOCK, HARBOUR, RIVER*),

- commissioners opposing construction of railway bridge across river, 20
- obstruction of — on canal and competition by compartment boats, opposed by barge-owners, 77
- provisions in bill relating to bye-laws as to — providing for appeal to Board of Trade, 77
- company as landowners opposing bill, where land of navigation undertaking was scheduled, 153
- trustees claiming to represent shipping and trade interests against bill affecting harbour, 270
- trustees opposing provisions for abatement of smoke nuisance in burgh improvement bill of corporation, 270
- provision for cattle dépôt in burgh improvement bill opposed by — trustees on ground of competition, 270

NOTICES (*See* OBJECTIONS TO *Locus Standi*, OWNERS, PETITION, PRACTICE).

NUISANCE,

provisions for abatement of smoke — within port in burgh improvement bill, opposed by navigation trustees, 270

OBJECTIONS TO *LOCUS STANDI* (*See also* PETITION, PRACTICE),

application for extension of time for giving notice of —, 11
notice of — deposited after time, 159

OBSTRUCTION (*See also* ACCESS),

competition and — of navigation on canal by compartment boats, 77
— of access to business premises by stopping up of streets by construction of railway, 212

OCCUPIERS (*See* OWNERS).

OVERSEERS,

petition by — against proposed railway in respect of demolition of houses and diminution of rates, 68

OWNERS, LESSEES, AND OCCUPIERS (*See also* RAILWAY (3), RATEPAYERS),

— of property adjacent to site for hospital, opposing formation of united district for infectious diseases hospital, 127

— opposing running powers over railway and repeal of prohibitions as to heavy goods traffic and construction of station, 134

— of houses complaining of obstruction and loss of access to town by construction of railway, 136

— and mortgagees of hydropathic establishment opposing conveyance to local board of mineral springs and pump-room, 171

— not being consumers within district of supply opposing bill of water company for additional works, 181

water company as adjoining —, claiming a landowner's *locus standi* in respect of road in which promoters sought to lay pipes, 246

telephone company as licensees of — of houses opposing street improvement bill of corporation, on ground of interference with overhead wires, 259

local authority seeking special powers of local government opposed by — injuriously affected by increased rates, 276

— as distinguished from ratepayers, opposing bill of local authority, 276, 349

salt union having restrictive covenants with — of lands sought to be acquired for sidings, opposing railway bill, 284

construction of steam tramway on country road opposed by — of houses in village, as frontagers, 310

— ratepayers and inhabitants opposing acquisition of golf links by corporation of burgh, 349

leaseholders how far — for purposes of *locus standi*, 349

PARISH (*See also* RATES, VICAR),

inhabitants and churchwardens of ecclesiastical district formed from —, opposing transfer of advowson and re-endowment of rectory, 123

PARTNERS (*See* RAILWAY (3)).

PENALTY CLAUSE,

— in bill how affecting *locus* of corporation opposing bill as not imposing obligation on promoters to construct railway, 344

PETITION (*See also* PRACTICE),

notice of objections to *locus standi*, application for extension of time for serving, 11

sufficiency of allegation in — of injury to trade, 34, to owners, 71

authority to represent inhabitants not alleged in —, 72

absence from — of landowners, of allegation that their lands were taken by bill, 87

joint — of traders and corporation of burgh, opposing withdrawal of railway facilities, 104

PIER,

proposed alteration of *status* of shareholders in — and lift company, 28
 power to subscribe to —, alleged violation of existing agreement by, 157
 owner of — opposing establishment of ferry with power to owners of
 boats to use landing-stage, 266
 construction of — and imposition of harbour rates in sea loch hitherto
 forming free anchorage, 346

PIER MASTER,

extension of limits of jurisdiction of — opposed by owner of slipways as
 affecting vessels approaching same, 318
 jurisdiction of — created by bill, how affecting vessels approaching existing
 free pier, 346

PIPES (*See* OAS, MAINS, ROAD, WATER).

POLICE,

— and sanitary provisions, proposed additional taxation for, opposed by
 associations of landowners and individual owners of property, 100
 practice of Committee on — and sanitary bills, as affecting question of
locus standi, 174

POLICE COMMISSIONERS,

interference with roads and sewers of burgh by construction of railway
 opposed by — of burgh, 193
 — of burgh promoting bill to acquire golf links, opposed by ratepayers,
 owners, etc., 349

POLLUTION (*See* RIVER, WATER).PORT (*See also* DOCK, HARBOUR),

provision in burgh improvement bill for abatement of smoke nuisance
 within —, opposed by navigation trustees, 270
 provision relating to infectious cases on board ships within — in burgh
 improvement bill, opposed by corporation as sanitary authority, 270
 provision in burgh improvement bill for expenses of treatment of infectious
 cases within — opposed by navigation trustees as affecting shipping
 interests, 270
 railway companies interested in sea-borne traffic opposing formation of new
 harbour and railway extension to competing —, 353

“POST CASE”

discussed, 14, 19, 117

PRACTICE (*See also* PETITION),

objection by railway company with running powers over line to admission
 of another company, 1
 notice of objections to *locus standi*, application for extension of time for
 serving, 11
 Court unwilling to re-open or decide questions relating to legal rights of
 petitioners, 11
 railway company as landowners claiming general *locus* against omnibus
 bill, 14
 applicable to bills confirming Provisional Orders, 26
 where clause agreed in House of Lords, petition with additional signatures
 but identical interests, how far entitling to *locus standi*, 39
 remedy at law how far affecting right to *locus standi*, 45
 re-hearing of case after motion in the House to allow petitioners against
 amalgamation bill to be heard, 52
 probability of injury, how far a ground of *locus standi*, 60
 petitioners whose bill had been rejected in first House, claiming insertion
 of running powers in competing bill in second House, 64
 how far necessary for owners to allege that they are within the limits of
 deviation and to allege specific injury in petition, 71
 petitioners against extension of time bill not entitled to re-open question of
 guarantee, 75
 petitioners served with notice as landowners not alleging that their lands
 were taken under bill, 87
 withdrawal of signatures from petition, 90
 right of petitioners to be heard against clauses of bill as amended for
 Committee, 98

PRACTICE—Continued.

- appearance not entered by petitioners, on promoters undertaking not to reinstate clauses, 99
- joint petition of steamship owners and steamship owners' association, and claim of association to represent trade and shipping interests, 115, 346
- how far railway company as landowners entitled under S. O. 133 to a general or limited *locus standi*, 117
- same land scheduled by bills of promoters and petitioners, as ground of *locus* against provisions in omnibus bill authorising new railway and extension of authorised railway, 120
- where insufficiency of allegations in petition, how far promoters bound to consider deposited plans with petition, 120
- landowner claiming general *locus* against repeal of protection clauses in existing Act, 130
- special instruction to Committee, how far affecting right to *locus standi*, 130
- road within limits of deviation, whether express powers necessary to divert or stop up, 136
- temporary inconvenience during construction of line, how far amounting to special grievance, 136
- absence of *prima facie* evidence of fraud, how affecting *locus* of petitioner, 144
- right of petitioners to be heard against bill as deposited, 151, 341
- allegation of competition in petition, explained by reference to map, 155
- deposit of notices of objection to *locus standi* after time, 159
- authority of vicar and churchwardens to sign petition on behalf of inhabitants and ratepayers, 163
- ambiguity of definition of "mineral springs" in bill as ground of *locus standi* of owners of hydropathic establishment, 171
- practice of Committee on police and sanitary bills as affecting question of *locus standi*, 174
- practice where constituents of member of Court are affected by bill, 174
- limited *locus standi* allowed to discuss alleged conflict between local Act and general law, 174
- sufficiency of allegation in petition, as to "injurious affecting," 184, 202
- the Court will not consider an allegation as to breach of faith, 191
- the construction of a statute how far a question for the Court, 191
- how far the Court will consider the question of general public policy, 199
- where clause conceded, *locus standi* allowed for the purpose of seeing that clause is inserted in bill, 204
- a single ratepayer not entitled to be heard in his individual capacity as a ratepayer under S. O. 134, 221
- alleged suppression of facts at Local Government enquiry, a question for Committee, 224
- agreement not to oppose, how far binding when bill altered in first House, 231
- right of petitioners to be heard where *locus standi* of other petitioners raising similar objections is conceded, 237
- locus standi* granted against principal clauses authorising use of electrical power, how far entitling to *locus* against subsidiary clauses, 242
- practice as to joint petitioners when objections refer to only one petitioner, 298
- petitioners allowed *locus* against a particular clause to ask Committee to make meaning clear, 300, 339
- right of landowners having received notice to treat to oppose extension of time railway bill, 330
- claim of local authority for *locus* to extend sect. 133 (Land Tax, etc.) of Lands Clauses Act, 1845, to local rates not leviable at time of passing of Act, 341
- penalty clause in bill, how affecting *locus* of corporation opposing bill as not imposing obligation to construct railway, 344
- right of petitioners, how affected by deposit of duplicate petition raising same points, 349
- leaseholders, how far entitled to *locus* as owners, 349
- right of company working railway to be heard in addition to company owning railway, 353

PROPRIETORS (*See* SHAREHOLDERS).

PROSPECTIVE BENEFIT,

- loss of —, by abandonment of line authorised in previous session, 104

PROTECTIVE CLAUSES (*See* SAVING CLAUSES).

PROVISIONAL ORDER (*See also* PRACTICE),

- extending area of supply of electric lighting company opposed by shareholders, 26
- for formation of united district for hospital for infectious diseases, omitting reference as to site of hospital, 127

PUBLIC MEETING (*See also* PRACTICE, RATEPAYERS, SHAREHOLDERS),

- insignificance of —, how far affecting right of gas consumers to be heard, 53
- authority given by —, to vicar and churchwardens to petition on behalf of ratepayers and inhabitants, 163

PUBLIC PARK (*See* RECREATION GROUND).**PUMP-ROOM,**

- extinguishment of rights in —, by conveyance to local board, with power to sell water, opposed by owners of hydropathic establishment, 171

QUANTUM OF INJURY,

- not distance, test of right to *locus*, 60

RAILWAY (*See also* AGREEMENT, EXTENSION OF TIME BILL, RATES),

- (1) ABANDONMENT. (2) AMALGAMATION. (3) COMPANY. (4) COMPETITION. (5) JUNCTION. (6) RUNNING POWERS. (7) STATION. (8) WORKING AGREEMENT.

(1) *Abandonment,*

- of line and substitution of another opposed by corporation of burgh alleging injury to town, 104
- partial — and diversion of authorised line opposed by company under an agreement to work same, 108
- partial — opposed by corporation alleging injury to borough, 337

(2) *Amalgamation,*

- alleged virtual — by vesting railways of harbour trustees in railway company, 5
- railway — affecting traders by removal of competition, 50
- between railway and docks causing injury to traders by removal of competition, 217
- alleged virtual — by agreement for transfer of railway to working company, 240
- joint — of local with through railway companies opposed by competing company, 334

(3) *Company,*

- proposing to subsidise harbour revenues opposed by owners of competing harbours, 5
- transfer of powers to make railway from — to dock company, 12, 14
- as landowners, opposing interference with land of —, by formation of junctions, 14, 19
- underground — not interfering with surface of street opposed by vestry, 40
- adjacent landowners opposing underpinning clause as to underground —, 44
- as owners of portions of railway over which promoters' railway must pass, 46
- general *locus standi* claimed against — crossing land of petitioners, 67
- proposing to pull down houses for works, and causing diminution of rates, opposed by local authority, 68, 341
- petition of —, forming link in chain of through communication, 69
- interested in guarantee to promoters opposing extension of time bill, 75
- as dockowners, opposing junction on ground of competition and diversion of traffic, 81
- as landowner, how far affected by S. O. 133, 87
- seeking to convert local into through line, opposed by corporation of burgh, 104
- seeking steamboat powers, opposed by companies working and owning competing line, and also as joint owners of railway with promoters, 111

RAILWAY—*Continued.*

- as landowners whose land is compulsorily taken, claiming general locus, 117
- where proposing to convert branch goods line into passenger railway, claim of petitioning company to extend running powers over promoters' railway to this branch, 117
- petitioning — opposing extension of time for railway crossing their land, 117
- seeking running powers over railway intersecting petitioners' property, and thereby repealing protective provisions in existing Act, 130
- construction of line by — in front of petitioners' property, causing temporary interference with access, 136; causing injury to church by disturbance and vibration, 139
- agreement of — with road authority not confirmed by bill, how affecting locus, 151
- same land scheduled by — as under bill jointly promoted by petitioners and another railway company, 152
- scheduling land forming part of navigation undertaking, opposed by navigation company, 153
- proposing to construct a railway across catchment area of reservoir of corporation supplying water to the district, 187
- extension of railway opposed by a —, whose lands were scheduled, claiming landowners' locus standi, 191
- construction of railway on embankment in burgh by —, opposed by Police Commissioners of burgh, 193
- asking for steamboat powers, opposed by independent steamboat companies, 195, 197
- stopping up streets by construction of railway, opposed by manufacturers, 212
- widening of line by —, causing interference with light and air of petitioners' premises, 213
- extension of time bill for purchase of lands by —, opposed by corporation as landowners, they having acquired the land since the original Act conferring compulsory powers, 224
- extension of time bill for construction of railway and canal by —, opposed by local authority as delaying reconstruction of bridge provided for in original Act, 227
- county council opposing promotion by — of railway outside county on ground of interference with road leading into county, 234
- agreement for vesting railway in working —, opposed by competing company, 240
- alleging competition and "injurious affecting" as frontagers, 242
- opposing use of electricity on tramways forming continuous route, 242
- seeking protective clauses for telegraph wires and signals in bill authorising the use of electricity on tramways, 242, 256
- provisions for works for electrical power on tramways carried across railway bridges, opposed by — apprehending injury to bridges, 256
- running powers sought by — over authorised railway, opposed by contractor with a contingent interest therein, 264
- powers sought by — to construct reservoir and make aqueduct and impound stream, opposed by corporation supplying water to district, 269
- acquisition of lands by — for sidings, opposed by salt union having restrictive covenants against salt working with owners of lands sought to be acquired, 284
- construction of dock by — opposed by ratepayers, 287
- promoting bill for alternative line in lieu of railway promoted in previous session, opposed by corporation of borough, 344
- extension of existing railway and construction of harbour, opposed by — interested in competing harbour, 353
- working railway in perpetuity, how far entitled to be heard in addition to company owning railway, 353

(4) *Competition,*

- new or improved —, by transfer of powers from railway to dock company, 12
- by transfer of power to construct authorised railway to dock and railway company, 16
- between local and through railway by means of running powers, 19
- with existing railway, opposed by corporation on account of injury to trade, 34

RAILWAY—Continued.

- improvement of existing — between toll bridge and railway, 36
- removal of — by amalgamation, opposed by traders, 50
- status of petitioners not affected by removal of —, 53
- new — caused by construction of local line forming junction with through railway, 69
- junctions with petitioners' railway available for —, how far entitling to a general *locus*, 108
- alleged by petitioning companies against railway seeking steamboat powers, 111
- local railway company alleging — with proposed through railway, 140
- possibility of — by circuitous route, but not effective, 155
- allegation of — arising from power to competing company to subscribe to pier, 157
- alleged by independent steamboat companies against railway company seeking steamboat powers, 195, 197
- alleged by steamship owners' associations against railway seeking to acquire steamboat powers, 199
- alleged injurious effect upon existing — by amalgamation bill, 217
- by amalgamation of local line with through railways, opposed by competing company, 334
- for sea-borne traffic at competing ports under bill for extension of authorised railway, 353

(5) Junctions,

- formation of — causing interference with land of railway company, 14
- and compulsory powers of taking land, 19
- construction of — opposed by harbour commissioners and railway company as dockowners, 81
- formation of — with petitioners' railway, how far entitling to general *locus*, if available for competition, 108

(6) Running Powers,

- over existing railway company sought by dock and railway company, 1
- petitioners having — opposing admission of another company to same, 1
- causing competition between local and through railway, 19
- claimed in second House, by petitioners whose bill has been rejected in first House, against competing bill, 64
- claim by petitioners to extend — over main line of promoters to branch railway, which promoters proposed to convert from a goods line into a passenger railway, 117
- sought over railway intercepting petitioners' property, thereby repealing protective provisions in existing Act, 130
- opposed by owners, lessees, occupiers and inhabitants, as involving practical repeal of prohibition of goods traffic under existing Act, 134
- power of petitioners to compel exchange of —, under previous Acts, interfered with by bill, 140

(7) Station,

- erected on petitioners' land, sought to be altered without his approval, 43
- construction of terminal — opposed by owners, &c., as affecting amenity of residential property, 134

(8) Working Agreement,

- and construction of junction with existing railway opposed by local board, 81
- company having — as to authorised line, opposing partial abandonment and diversion of same, 108
- proposed to be authorised by bill opposed by competing company, 81, 140
- in perpetuity, how affecting right of working company to be heard in addition to owning company, 353

RATEPAYERS (See also CORPORATION, INHABITANTS),

- and gas consumers injuriously affected by gas bill removing competition, 53
- claim of Scotch parochial board to represent — under Poor Law (Scotland) Act, 1845, 91
- not dissenting at statutory meeting represented by local board, 171

RATEPAYERS—*Continued.*

- gas company as — opposing construction of bridge by London County Council, 204
- opposing imposition of improvement (“Betterment”) rate by London County Council, 204
- insufficiency in numbers of — and inhabitants opposing bill for constitution of burial board, 221
- single — and inhabitants not entitled to be heard in individual capacity under S. O. 134, 221
- owners and occupiers, as distinguished from —, opposing bill of local authority, 276, 349
- opposing construction of dock, how far represented by corporation, 287
- inhabitants and owners, etc., opposing acquisition of golf links by corporation of burgh, 349

RATES (*See also* EXTENSION, HARBOUR, RAILWAY, &c.),

- diminution of —, during construction of proposed works, opposed by local authority, 68, 341
- poor —, proposed exemption of public buildings from, opposed by parochial boards, 91, and by School Board, 96
- school —, collection of, by parochial boards, opposed by School Board, 96
- combined railway and sea — provided for in bill of railway company seeking steamboat powers, 111
- reduction of —, at one harbour, opposed by trustees of competing harbour, 178
- cost of construction of bridge by London County Council to be borne by local — and by improvement —, opposed by ratepayers, 204
- collector of — not petitioning as such, but signing petition of ratepayers, not entitled to be heard, 221
- local authority seeking special powers of local government opposed by owners and occupiers alleging “injurious affecting” by increased —, 276
- grouping of — at docks, how affecting traders, 313; how affecting owner of competing docks, alleging undue preference, 318
- diminution of local —, not provided for by Lands Clauses Act, 1845, sect. 133, a ground for *locus* against railway bill involving demolition of houses, 341
- imposition of pier and harbour — within sea loch hitherto forming free anchorage, opposed by traders and county council, 346
- additional — for purchase and use of golf links under bill promoted by corporation, opposed by ratepayers, owners, etc., 349

RECTORY (*See* ADVOWSON).**REFEREES** (*See* PRACTICE).**RE-HEARING** (*See* PRACTICE).**REMEDY AT LAW** (*See* AGREEMENT, PRACTICE).**RECREATION GROUND,**

- acquisition by corporation of golf links as — with power to charge rates on players, opposed by ratepayers, owners, &c., in burgh, 349

REMOTENESS (*See* INJURY).**REPEAL,**

- of clause in previous Act, for protection of petitioner, 144
- by water company of section in former Act for supply by meter, as ground for limited *locus standi* of owners, &c., 181

REPRESENTATION (*See also* INHABITANTS, LOCAL BOARD),

- proposed alteration of — on conservancy board, opposed by local authorities, 60
- by local board of harbour commissioners alleging distinct interests, 81
- how far — of a trade may be claimed by a trades' association, 115, 199, 346
- of trade by town council of Royal Scotch burgh, 178
- claim of county council outside drainage area to — on Drainage commission, 202
- alleged — of gas company as ratepayers by county council, 204
- alleged — of ratepayers and inhabitants of district, insufficient in number, by local authority, 221

REPRESENTATION—Continued.

- sufficiency of — of inhabitants of an ecclesiastical district petitioning against church removal bill, 229
- insufficiency of — of members of congregation by a single individual, 229
- county councils and corporation opposing bill for alteration of constitution of conservancy board and claiming additional —, 295
- claim of voluntary association, for promoting efficient — on conservancy board, to oppose bill altering constitution of board, 298
- alleged — of corporation as ratepayers by London County Council seeking powers to expend county rate on enquiries as to water supply and markets, 300
- alleged — of inhabitants, ratepayers and owners in Scotch burgh by corporation promoting bill for acquisition of golf links, 349

RESERVOIR,

- bill for extension of time to construct — opposed by local board, 124
- construction of railway across catchment area of — and apprehended interference with streams, opposed by corporation, 187
- powers sought by railway company to construct — and aqueduct opposed by corporation supplying water to burgh, 269
- enlargement of — how affecting riparian owners entitled to compensation water, 320

RESIDENTS (See INHABITANTS).**RES JUDICATA (See LEGISLATION, PRACTICE).****RIGHT OF WAY (See FOOTPATH, ROAD).****RIPARIAN OWNERS,**

- opposing bill for bridge as affecting flow of river, on ground of injury to property, 60
- money payments to — in lieu of compensation water, 144
- below point of return of impounded water, how far affected, 147
- and traders opposing diversion of river water into dock, 313
- opposing construction of dock as interfering with access to competing dock, 318
- claiming increase of compensation water on account of enlargement of existing reservoir, 320
- local board as — opposing outfall of sewer into tidal river, 327

RIVAL SCHEME (See also COMPETITION),

- of petitioners having been rejected, claim to be heard to ask for running powers over promoters' line, 64

RIVER (See also CONSERVANCY),

- construction of bridge and weir with removable sluices, over navigable — opposed by local authorities and riparian owners, 60
- water of — impounded, how far persons below point of return of compensation water affected, 147
- apprehended affecting of — by abstraction of underground water by water company, 181
- apprehended interference with, and pollution of —, by construction of railway across catchment area of reservoir, 187
- proposed diversion and widening of — under drainage bill, opposed by county council outside the drainage area, 202
- riparian owners and traders opposing diversion of — water into dock, 313
- outfall of sewer into tidal — opposed by neighbouring riparian local board, 327

ROAD (See also FOOTPATH),

- vestry as — authority opposing underground railway, 40
- where — included in limits of deviation, but no express powers to divert same in bill, right of owners to be heard, 136
- reference to agreement by — authority with railway company, not confirmed by bill, 151
- interference with main — by pipes of water company, opposed by county council, 160
- interference with — by water company, opposed by owners, &c., 181
- interference with — in burgh by construction of railway, opposed by Police Commissioners of burgh, 193

ROAD—*Continued.*

- alteration of levels of — and disturbance of gas pipes by construction of bridge, opposed by gas company, 204
- corporation opposing bill of county council to carry out works already authorised which would cause interference with —, 208
- stopping up of — by bill for construction of railway, opposed by manufacturers, 212
- blocking of — by tramway, causing interference with access to docks, opposed by local board, 215
- interference with — outside county, no ground for *locus standi* to county council as road authority, 234
- water company as adjoining owners claiming a landowner's *locus standi* in respect of a — in which promoters sought to lay pipes, 246
- gas and water companies apprehending injury to pipes in — by construction of works for cable haulage of tramways, 262
- bill for removal of gates and obstructions from — opposed by gas company, 307
- construction of steam tramway on country — opposed by owner of houses in village as frontager, 310
- interference with — by waterworks opposed by gas company claiming landowner's *locus*, 324

ROAD AUTHORITY (*See* LOCAL BOARD, ROAD).**ROYALTIES,**

- owner of — at docks, opposing construction of competing dock, 318

RUNNING POWERS (*See* RAILWAY (6)).**RURAL SANITARY AUTHORITY** (*See* SANITARY AUTHORITY).**SANITARY AUTHORITY** (*See also* CORPORATION, COUNTY COUNCIL, LOCAL BOARD).

- of adjoining district, alleging injurious affecting, opposing the formation of united district for hospital for infectious diseases, 127
- below point of return of impounded water opposing bill, 147
- opposing construction by neighbouring authority of sewer with outfall into tidal river, 327

SANITARY (*See also* CORPORATION, LOCAL AUTHORITY),

- and police provisions, proposed additional taxation for, opposed by association of landowners and by individual owners of property, 100

SAVING AND PROTECTIVE CLAUSES,

- provisions of bill inconsistent with — in existing Act, as ground of *locus*, 43
- claim for — by telephone company in bill for extension of time for constructing tramways, 102
- proposed repeal of —, prohibiting heavy goods traffic, opposed by landowner, 130
- proposed repeal of — as to compensation water, affected by subsequent agreement, 144
- telephone company claiming —, on transfer of electrical tramway to corporation, 167
- telephone company claiming — in bill authorising construction of tramways and use of mechanical power, 242

SCHEDULE (*See* LAND).**SCHOOL BOARD,**

- opposing exemption of public buildings from poor rate, 96

SERVICE OF NOTICES (*See* PETITION, PRACTICE).**SEWER,**

- interference with — by underground railway opposed by vestry, 40
- interference with — in burgh by construction of railway, opposed by Police Commissioners of burgh, 193
- construction of — how affecting mains of gas company, 324
- construction of — with outfall into tidal river, opposed by neighbouring local board, 327

SEWERAGE,

- scheme for — promoted by corporation opposed by neighbouring local board and county council, 237
- London County Council, alleging possibility of main drainage and — system being affected, opposing bill of local authority, 278

SHAREHOLDERS,

- not having dissented at public meeting, 11
- alteration of *status* of — proposed by bill dealing with issue of share capital, 28
- alleged collusion of — of both canal and dock companies to injury of riparian owners and traders, 313

SIGNATURES (*See* PETITION, PRACTICE).

SILTING,

- bill for borrowing additional money for carrying out navigation works opposed by corporation alleging that tidal flow would be injured by —, 56

SLIPWAYS (*See* DOCK).

SPRINGS,

- mineral — and pump-room, extinguishment of rights in, by conveyance to local board, with power to sell water, 171
- mineral —, ambiguity in meaning of, as ground for owner of hydropathic establishment to oppose bill, 171

STANDING ORDERS,

- 5 [Notices to specify limits of burial ground, hospital, &c.], 127
- 14 [Notices when it is proposed to abstract water from stream], 147
- 43 [Diversion of roads], 136
- 62-63 [Meetings of proprietors to approve bills empowering companies to do certain acts], 26
- 131 [In what cases shareholders to be heard], 26
- 132 [Dissenting shareholders to be heard], 26, 264
- 133 [In what cases railway companies to be heard], 1, 14, 87, 108, 117, 152
- 133A [Chambers of commerce, &c., may be heard in relation to rates and fares], 50, 217, 356
- 134 [Municipal authorities and inhabitants of towns], 20, 34, 40, 53, 60, 72, 81, 104, 134, 147, 163, 178, 181, 184, 187, 193, 208, 215, 221, 227, 237, 270, 295, 327, 337, 341, 344
- 134A [Local authorities to have *locus standi* against lighting and water bills], 147, 160, 163, 169
- 134B [County council alleged to be injuriously affected by bill], 202, 234, 237, 254, 278, 295, 346
- 135 [Petitions against tramway bills], 242, 310
- 151 [Proceedings on bills for confirming Provisional Orders], 26, 127
- 156 [Railway companies not to acquire canals, docks, steam-vessels, &c.], 5, 195, 199, 217
- 163 [No powers of purchase, &c., except after proof of certain matters before the Board of Trade], 240
- 171 [No powers to be given to local authority to place or run carriages upon tramways], 167, 250, 231
- 184 [Compensation water], 147, 160, 320
- 209A [Provisional Order Bills to stand referred to committee of selection], 26, 127

STATION (*See* RAILWAY (7)).

STATUS,

- alteration of —, by postponement of petitioners' claims to mortgagees, 28
- alteration of —, and diversion of traffic by railway company seeking steamboat powers, 111

STATUTES, PUBLIC (*CITED*),

- Burgh Police (Scotland) Act, 1892, 349; s. 384; 270
- Contagious Diseases (Animals) Act, 1878, s. 39; 270
- Divided Parishes and Poor Law Amendment Act, 1876, 278
- General Police and Improvement (Scotland) Act, 1862, 193; s. 363, 174
- Harbours, Docks and Piers Clauses Act, 1847, s. 30, 217

STATUTES, PUBLIC—*Continued.*

- Lands Clauses Consolidation Act, 1845, s. 16, 153; s. 40, 40; s. 128, 43 259, s. 133, 341.
- Local Government Act, 1888, ss. 3; s. 14; ss. 3, 356; s. 15, 234; 11, 14, 15, 160
- Metropolitan Board of Works (Loans) Act, 1869, ss. 38, 50; 208
- Metropolis Management Act, 1855, 278; s. 135; 208
- Municipal Corporations (Borough Funds) Act, 1872, 349
- Poor Law Act, 1879, s. 17; 221; 278
- Poor Law (Scotland) Act, 1845, s. 17, 91
- Public Health Act, 1875, s. 52, 125; 163, 246, 276, 278; ss. 131, 279; 308, 127
- Public Health Acts, 1890, 276
- Public Health (Scotland) Act, 1867, ss. 52, 54; 270; ss. 89, 90; 187
- Railways Clauses Act, 1863, Part II., 330
- Railways Clauses Consolidation Act, 1845, s. 16, 46; s. 77, 284
- Rivers Pollution Prevention Act, 1876, 160, 356
- Roads and Streets in Police Burghs (Scotland) Act, 1891, 193
- Telegraph Act, 1878, 259
- Tramways Act, 1870; 160; ss. 19, 43, 184, 250; s. 30; 262
- Waterworks Clauses Act, 1847, s. 28; 246

STATUTORY RIGHTS,

- telephone company without —, opposing bill for extension of time for construction of tramway, 102
- water company without —, opposing water bill for supply by promoters within area supplied by themselves, 164
- relating to royalties at docks, affected by bill for competing dock, 318

STEAMBOATS,

- powers for —, sought by railway company, opposed by competing railway companies, 111
- powers for —, opposed by association of steamship owners and individual steamship owners, 115, 199
- opposition of independent — companies to railway company seeking steamboat powers, 195, 197

STEAMSHIP OWNERS,

- joint petition of —, and steamship owners' association, and claim of association to represent trade and shipping interests, 115, 346
- opposition by — associations claiming to represent their individual members against bill of railway company asking for steamboat powers, 115, 199
- and traders opposing imposition of harbour rates to sea loch hitherto forming free anchorage, 346
- association claiming to represent traders in opposing harbour bill, 346

STOPPAGE (*See* ACCESS, FOOTPATH, ROAD).STREAM (*See* RIVER).STREET (*See also* ROAD),

- meaning of — in S. O. 135 relating to tramway bills, 310

STRUCTURAL DAMAGE,

- to church by propinquity of railway, 139

SUBSIDENCE,

- apprehended injury by — caused by underground railway, 40

SUBWAYS,

- county council bill containing prohibition of interference with access to —, opposed by local board as road authority, alleging interference with their powers and duties, 210

SUPPLY (*See* GAS, WATER).TAXATION (*See also* HARBOUR, RATES).

- additional — for police and sanitary improvements, opposed by association of landowners and by individual owners of property, 100
- alteration of — alleged by owners opposing bill of local authority, 276

TELEGRAPH (*See* RAILWAY (3)).

TELEPHONE,

- company without statutory powers opposing bill for extension of time for constructing tramway to be worked by electricity, 102
- company, without statutory powers, opposing transfer of electrical tramway to corporation, and claiming protective clauses, 167
- claim by — company for protective clauses in bill authorising construction of tramways and the user of mechanical power, 242
- powers sought by corporation to pull down houses for street improvements, opposed by — company as licensees of owners of houses, on account of interference with overhead wires, 259
- consolidation bill enabling corporation to work tramways already worked by electricity opposed by — company, 281

THROUGH-RATES,

- combined railway and sea — proposed by bill, 111

TIDAL FLOW,

- alleged injury to — by corporation opposing bill for making deep water channel, 56
- diminution to scour of —, alleged by construction of bridge over navigable river, 60

TOLL BRIDGE,

- abstraction from — of traffic by railway, 23
- owners of — opposing railway giving direct access to town, 36

TOLLS (*See also* BRIDGE, HARBOUR, RATES),

- harbour commissioners apprehending diminution of — by junction, 81

TOWN COUNCIL (*See* CORPORATION),

TRADE (*See also* TRADERS),

- injury to — by construction of competing railway, claim of corporation to be heard as to, 34
- right of association representing particular — to be heard as distinguished from association representing combination of various trades, 115
- town council of Royal burgh claiming to represent —, 178
- injury to — by removal of competition, by amalgamation of railway with docks, 217
- opposition to amalgamation bill by association of coalowners representing coal — of district, 217
- Salt Union as — association, having restrictive covenants with owners of lands sought to be acquired by railway company, opposing bill, 284

TRADERS (*See also* TRADE),

- and inhabitants opposing interference with access to harbour, 20
- affected by removal of competition owing to railway amalgamation, 50
- petition of —, where corporation of burgh also petitioning, 50
- joint petition of — and corporation of burgh, against withdrawal of railway facilities, 104
- opposing extension of burgh and application thereto of existing Acts affecting their trade, 174
- opposing bill affecting road, how far represented by local authority, 212
- and riparian owners opposing diversion of river water into dock, 313
- and shipowners opposing imposition of harbour rates within sea loch hitherto forming free anchorage, 346
- representation of — and steamship owners, claimed by Shipowners' Association, 199, 346
- representation of — by chamber of commerce, 356

TRAFFIC (*See also* RAILWAY (3), TRAMWAY),

- "working" goods — meaning of, 3
- diversion of — to harbour subsidised by railway, 5
- obstruction of — by transfer of powers from railway company to dock and railway company, 14

TRAFFIC—*Continued.*

- diversion of — causing injury to competing docks, 17
- abstraction of — from existing road bridge by railway bridge, 23
- diversion of — causing injury to owners of toll bridge, 36
- repeal of Act prohibiting goods traffic on underground railway, 40
- diversion of — owing to proposed combination of railways, 46
- diversion of — apprehended by company as dockowners from construction of railway junction, 81
- diversion of — and competition, by bill for diversion and partial abandonment of authorised line, 108
- alteration of *status* and diversion of — by railway company seeking steamboat powers, 111
- clauses prohibiting heavy goods —, landowners opposing repeal of, 130
- absorption of neutral gathering ground of — by railway amalgamation bill, opposed by competing company, 334
- competition by railway companies for sea-borne — at competing ports a ground of *locus*, 353

TRAMWAY,

- extension of time for construction of electric — opposed by telephone company without statutory powers, 102
- construction of — to be worked by cable haulage, causing interference with pipes of water company, 160
- propelled by electricity, proposed transfer of, to corporation, opposed by telephone company, 167, 281
- bill of — company, containing powers of agreement with local authorities as to mechanical power, purchase of tramways, &c., opposed by corporation, 184
- construction of — by corporation, partly outside borough, opposed by local board of adjoining district, alleging interference with access to docks in borough, 215
- bill authorising construction of — and user of mechanical power, opposed by telephone company claiming protective clauses, 242
- railway company alleging competition and “injurious affecting” as frontagers, opposing use of electricity on — forming continuous route, 242
- corporation seeking powers to purchase — by agreement, and to work and lease same to third parties, by bill containing no provision for approval of lease by Board of Trade, 250
- purchase of — by corporation beyond district of county council, who alleged injurious affecting of — within district, 254
- use of electrical power on —, opposed by railway company apprehending disturbance to telegraphs, 256
- provisions for works for electrical power on — carried across railway bridges, opposed by railway company apprehending injury to bridges, 256
- powers to construct works for cable haulage of —, opposed by gas and water companies apprehending injury to pipes, 262
- construction of steam — along country road, opposed by owner of houses in village as frontager, 310

TRANSFER (*See RAILWAY*).**TRUSTEES** (*See HARBOUR*).**TURNPIKE,**

- right of owners of — to *locus* against railway discussed, 36

UNDERGROUND (*See RAILWAY* (3); *WATER*).**UNDERPINNING,**

- power for — and to rebuild sought by underground railway company, 40

UNDUE PREFERENCE (*See RATES*).**VESTRY** (*See LOCAL BOARD*),**VIBRATION** (*See CHURCH, RAILWAY* (3))

VICAR

and churchwardens alleging injury to church by construction of railway, 139
 ——— opposing water bill on behalf of inhabitants, 163

WATER (*See also* WATERWORKS),

extension of time for construction of — works opposed by local board of neighbouring district requiring further supply to their own district, 125
 bill providing for money payment in lieu of compensation — to riparian owners, opposed by mill owner, 144
 bill to repeal clauses as to compensation — and reservoirs and to impound water, opposed by riparian owners and sanitary authority, 147
 alleged interference with pipes of — company by construction of tramway to be worked by cable haulage, 160
 interference with main roads by pipes of — company, general *locus* claimed by county council as to, 160
 — bill, opposed by vicar and churchwardens of parish within district of supply, as representing inhabitants, 163
 — bill, opposed by non-statutory company proposed to be included in limits of supply, 164.
 local authority within the limits of supply, injuriously affected as to supply of —, how far entitled to *locus standi* under S. O. 134A, 169
 bill for additional works and abstraction of underground — by water company, opposed by owners not consumers within district of supply, 181
 owners allowed a limited *locus standi* against — bill, which repealed a section in a former Act providing for a supply of water by meter for non-domestic purposes, 181
 opposition of corporation, supplying — to district, to construction of railway across catchment area of their reservoir, 187
 interference with, and pollution of streams and surface — by construction of railway, opposed by local authority, 187
 — company, as adjoining owners, claiming a landowner's *locus standi* in respect of a road in which promoters sought to lay pipes, 246
 opposition of — company also supplying district, to bill of local authority for additional works, 246
 corporation claiming landowner's *locus* in respect of a leat crossed by pipes of — company, 248
 powers to construct works for cable haulage of tramways opposed by — company apprehending injury to pipes, 262
 railway company seeking power to supply — within the district of supply of corporation, 269
 opposition of — companies to alteration of constitution of river conservancy boards by bill of London County Council, 290
 increase of compensation — claimed by riparian owners, on account of enlargement of reservoir, 320.

WATERSHED,

claim by petitioners to — appropriated by promoters under previous Acts, 125

WATERWORKS (*See also* WATER),

bill for additional —, opposed by local board whose district was supplied by promoters, 169
 enlargement of — how affecting riparian owners entitled to compensation water, 320
 danger to life and property at colliery from enlargement of reservoir, 329
 gas company alleging injury to mains by construction of —, 324

WEIR,

construction of lock and — with removable sluices opposed by local authorities, 60

WELL,

apprehended affecting of — by abstraction of underground water opposed by water company, 181

WHARF (*See* DOCK).

